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Supreme Court, U.S.
FILED

No. 011275 DEC 21 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CHARLIE HARRIS; JOHN H. HARRIS, ET AL.,

Petitioners,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH;
C. WILLIAM KECK, DIRECTOR OF HEALTH ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

CHARLIE HARRIS AND
JACQUELINE HARRIS
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Pro Se Petitioners

98 PP

QUESTION(S) PRESENTED

1. Did the United States Court of Appeals depart from the accepted and usual course of judicial proceedings in striking affidavits from the petitioners' brief as new evidence when the same affidavits were used repeatedly in motions in the lower district court and then make the statement that the petitioners lacked that same evidence?

2. Did the United States Court of Appeals sanction departure from the accepted and usual course of judicial proceedings by the lower district court granting summary judgment after almost five (5) years of proceedings, no oral argument, and no bona fide trial?

3. Did the United States Court of Appeals enter a decision that is in conflict with the decision of the Court of Appeals of the Ninth Appellate District that mandatory inspections, twice a year for four years of every rental unit an owner owns when he had been convicted of failing to register, is unconstitutional and violates due process? Also is the Housing Appeals board a remedy when there is a constitutional question?

4. Did the United States Court of Appeals depart from accepted judicial proceedings in stating that the petitioners were unreasonable to be convinced that a judge can be biased?

5. Did the United States Court of Appeals depart from the accepted and usual judicial proceedings when it did not recognize the defendants' failure to comply with discovery or the district courts' failure to note any of the affidavits presented in the petitioners' behalf?

QUESTION(S) PRESENTED – Continued

6. Did the United States Court of Appeals depart from usual judicial proceedings in their failure to recognize that the respondents provided no evidence to prove an emergency to health, safety and welfare of its citizens, and a threat to new development?

7. Did the United States Court of Appeals sanction the departure of the usual and accepted judicial proceedings in the district court when it held a plaintiff accountable for a bogus invisible tape?

8. Were the pro se litigants given less stringency than attorneys in the United States Court of Appeals and the district court or were they given due respect?

LIST OF PARTIES

Petitioners:

Charlie Harris, *pro se*
Jacqueline Harris, *pro se*
John H. Harris, *pro se*

Respondents:

Akron Department of Public Health
Akron City Council
John Valley, President of City Council
City of Akron
William Keck, MD, MPH, Director of Health
Robert Rommel
Jodie Forester
Jon Apati
Michele Williams
Laura Smart
Kevin Ragle
Steven Nome
John Doe

Attorneys for Respondents:

Assistant Directors of Law:

Deborah Forfia
Stephanie York

Others:

Attorney Avery Friedman

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OPINIONS BELOW

Petitioners do not believe the opinions of the lower courts in this case have been published yet.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION

1. 42 U.S.C. § 1983
2. Akron City Environmental Housing Code, Ordinance #769-1996
3. The Constitution of the United States, Fourth, Fifth, Seventh, Fourteenth Amendments.
4. The Ohio Constitution

STATEMENT OF THE CASE

On October 18, 1996 and October 22, 1996 the City of Akron passed and approved Ordinance No. 769 amending and/or supplementing Title 15, Chapter 150 of the Code of Ordinances. The ordinance mandates the yearly registration of all the property an owner owns, whether a trust or land contract, individual owners, banks or real estate companies, any housing property that is not owner-occupied. The implementation of that ordinance singled out owners of rental units only. The ordinance also mandates inspection of all the property an owner

owns twice a year for four years if he/she is convicted for not complying with just one of the orders of any one of the properties. This includes the fact that registering your property is listed as an order and, if convicted of that one thing, the owner is subjected to mandatory inspections and reinspections twice a year for four years of all the property he owns. Also inspection and re-inspection fees are imposed along with annual registration fees. The fact that time and fines may have been served and paid or that the property was complied with and/or is empty is not an issue. This ordinance was declared an emergency measure necessary to preserve public safety, health and welfare yet there was no legitimate government interest. In fact the City of Akron had several programs that were so successful that they were able to raise over 250 homes and rebuild about the same amount or more as well as much modern rehabilitation projects.

Charlie and Jacqueline Harris filed a *pro se* complaint in the federal court on December 18, 1996 within one month after the ordinance was approved and only after receiving a notice of prosecution from the Akron Health Department based on orders they have not received and failure to attend a hearing of which they were never given notice of concerning a commercial building and not a rental unit. The notice was indeed based on false and misleading information.

The Honorable Judge Sam Bell granted them leave to file an amended complaint. The *pro se* amended complaint was filed on January 17, 1997 along with an amended motion for preliminary injunction. For the sake of time on June 9, 1997 Charlie and Jacqueline Harris filed

a motion to bifurcate all issues except the issues concerning the constitutionality of the ordinance. The bifurcation was granted January 6, 1998 after many motions were filed between the parties. Also at that same date their motions for preliminary injunctions were denied. All were marginal entries.

On May 18, 1998 a status conference with Judge Sam Bell was held. Charlie and Jacqueline were able to see and read another amended complaint that was presented to them for the first time by Attorney Avery Friedman whom they retained along with ten others who were joined into the case. Immediately after reading his amended complaint they realized that it was not what they wanted to have filed. Not only did it totally make their bifurcation motion null and void but it did not address the constitutional issues that were addressed in the amended complaint that they filed *pro se*. They verbally spoke out and let Avery Friedman know that they did not want him to file his amended complaint. Avery Friedman filed his amended complaint after knowing full well they did not approve. After sending written notice to Attorney Friedman and not receiving any response, the Harrises informed the attorney that they no longer wanted his representation, and on May 26, 1998 filed a *pro se* motion to reinstate their bifurcation motion. It was denied on July 9, 1998 for failure to have attorney signature. Judge Bell retired and the case was reassigned to Judge Dan A. Polster.

During this time Avery Friedman was trying to convince the other parties that they needed to hire a demographic expert and to pay Attorney Friedman extra funds

to go to Washington, D.C. to find that so-called demographic expert witness. Also during this time Charlie and Jacqueline Harris repeatedly notified Avery Friedman that he was not representing them.

Then on October 13, 1998, a status conference with Judge Polster was held for the first time. The first thing he said was that he was not reinstating any bifurcation motion and the second thing he said was that this case would not go forward without an expert witness. In fact the judge designated January 5, 1999 to obtain an expert witness. This was the beginning of pains of distress from a biased judge. Why was he so insistent on an expert witness on constitutional issues if he had not spoken to anyone. It was obvious to the Harrises that something was not right, for it was only at that time on October 13, 1998 that Avery Friedman finally responded to their demands and filed the motion to resign, and for the Harrises to proceed *pro se*, and to reinstate the bifurcation motion. After that conference the other parties funded Attorney Friedman's trip to Washington, D.C. In fact he used the judge's words as a convincing argument. He went to Washington, D.C. and nothing was ever accomplished.

On December 3, 1998 the Harrises filed a motion for Judge Polster to recuse himself from the case. Then Avery Friedman withdrew as attorney for the other parties on December 10 and it was granted on December 11, 1998. The recusal was denied on December 10, 1998 with a marginal entry and no explanation. Then on February 3, 1999 the Harrises filed for preliminary injunction. Then on March 31, April 7 and April 23, 1999 the Harrises attempted to proceed *pro se* after new counsel was not

able to represent their case according to the written agreement.

At a hearing before Judge Polster the Harrises requested that they be granted permission to go back to their *pro se* amended complaint, and it was at this time that the defendants' attorney stated that they would only need the discovery they requested only if the Harrises would be granted permission to go back to their *pro se* amended complaint. *Pro se* motions to return to the *pro se* amended complaint were filed on August 30, 1999 and September 7, 1999. After those were denied they filed a *pro se* interlocutory appeal for the right to return to their *pro se* amended complaint and that appeal lacked jurisdiction. Also it was very obvious that all of the affidavits attached to the preliminary injunctions proving warrantless search and forced entry were ignored; consequently washing away any claims of the Fourth Amendment constitutional issues.

During all of this time the City of Akron Health Department continued to try and prosecute the Harrises. In September of 1997 they were sent a prosecution notice for a property of which the repairs were complied; in turn an injunction was filed with affidavits attached. Then on April 17, 1997 two policemen and a health department inspector came to another property without a warrant and forced their way in after being told not to enter. Therefore the Harrises filed another *pro se* motion for preliminary injunction with affidavits of the tenants attached. Then on May 23, 1998, at the same property, only different tenants, two policement and a health department inspector forced their way into the property

again after being told not to enter. A preliminary injunction was filed again after this incident with affidavits in support. That particular property was also on a Metropolitan Housing Authority Section 8 program. In fact that property was inspected by the Akron Health Department five times in one year based on anonymous complaints. This does not include the three times it was inspected by the Section 8 program. Legal documents were filed with the court proving forced warrantless entry and search which supported the Fourth Amendment issues. Also proof of falsified documentation and bogus anonymous complaints were ignored.

During all this time a hearing was never held for any of the preliminary injunction motions and the fact that the affidavits supported the Fourth Amendment issues were never addressed. In fact Judge Polster ignored this evidence in a biased manner. Then to top this all off they received notices of prosecution for two additional properties and it was after receiving those notices that they were forced to file suit in the Summit County Common Pleas Court. Then one of those cases was transferred to the district court. After filing motions attaching the notices showing that they filed the suits, only after being threatened of prosecution and the implementation of Ordinance 769, the district court judge declared that they only filed the suits because he did not grant their motion to file their previous *pro se* amended complaint. Judge Polster ignored real documentation and, with bias, sided with the defendants. Polster ignored all of the legal affidavits that plaintiffs filed and held a hearing based on a bogus invisible tape that the affidavits were proved not to exist.

Important hearings were never held; affidavits and other legal documents were never addressed; *pro se* status was never respected; and major constitutional issues were ignored. The entire experience was one-sided and biased. Attorneys filed absolutely no motions that would legally benefit their clients. In fact the statements that Judge Polster made that the case was a procedural nightmare was only the tip of the iceberg. The district court departed far from the accepted and usual course of judicial proceedings.

Then the Court of Appeals sanctioned the actions of the lower court. The Court of Appeals did not mention the fact that numerous motions to compel were also filed by the Harrises. Much of their request for discovery was based on the City of Akron providing documentation to support or prove an emergency for the health and welfare of its citizens. Also no proof was ever supplied with a list of individuals who were harmed due to rental unit neglect or absentee landlords. In fact, the Court of Appeals granted a motion to strike the legal affidavits used in the lower court as new evidence and it was obvious that the information was not new. The documents stricken from the Harris' brief were all that were needed to support their Fourth Amendment issues on warrantless search and entry. The stricken documents were the same affidavits used in the many preliminary injunctions filed in the district court. The Court of Appeals also supported some of the same misleading and false statements invented in the lower court. It was totally unreal that the Court of Appeals made that statement that it was unreasonable to be convinced that judges can be biased. That would mean in essence that all

judges can never become biased or that they were all perfect and incapable of being biased.

And what about the so-called remedy at the administrative level or the Common Pleas Court? The City of Akron Housing Appeals Board is not only a rubber stamp but it is not a remedy to mandatory inspections. The Board has already admitted that they are not equipped to handle the legal issues that Ordinance 769 has created. It has been proven with this case that the Common Pleas Court obviously lacks jurisdiction for the Harris' case and was transferred to the district court within days not even giving them time to object.

REASONS FOR GRANTING THE PETITION

The courts did not work for these citizens and did not contend with two strong constitutional issues: The Fourth Amendment prohibition against unreasonable searches and the Fourteenth Amendment of substantive due process that prohibits the unreasonable means of advancing questionable governmental interests.

Here citizens are downtrodden and at the whim of housing inspectors. Here big government is caught overreaching. Here an unfair Judge has managed to "LOSE" valuable constitutional issues.

It has been the law in the United States since 1967 that a warrant must issue prior to an administrative search to determine compliance with municipal safety codes. *Camara v. Municipal Court of the City and County of San Francisco,* 387 U.S. 523, 18 L.Ed. 2d 930 (1967).

Likewise wholesale mandatory inspection of every rental property owned by an individual or entity, when that party has been convicted of failing to register only one or two of its units, is unreasonable. This Court holds, therefore, that A.C.O. 150.40, as applied in this instance, violates appellants' substantive due process rights under the Ohio Constitution beyond any reasonable doubt. (*Urban Imperial Building & Rental Corporation, Appellant v. City of Akron, et al.* Appellees, C.A. No. 19933, Court of Appeals of Ohio, Ninth Appellant District, Summit County, Medina County, Ohio. *Stanford Williams, et al., Appellants v. City of Louis, et al., Appellees,* No. 85-1083, United States Court of Appeals Eighth Circuit, 783 F.2d 114).

Persons who provide rental homes for people provide a valuable service for our country and deserve this court's protection.

CONCLUSION

We urge this Court to grant the petition in this case and to resolve the constitutional questions that involve all rental unit providers nationwide.

Respectfully submitted,

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APPENDIX A

Nos. 00-3497/3511/3528/3540/3544

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 00-3497

CHARLIE HARRIS; JACQUELINE HARRIS,

Plaintiffs-Appellants,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH; AKRON CITY COUNCIL; JOHN VALLE, President of Akron City Council; C. WILLIAM KECK, MD, MPH, Director of Health; ROBERT REMMEL; JODIE FORESTER; JON APATI,

Defendants-Appellees.

Case No. 00-3511

RAYMOND L. BOROM,

Plaintiff-Appellant,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH; JOHN VALLE, President of Akron City Council; AKRON CITY COUNCIL,

Defendants-Appellees.

ORDER

(Filed May 8, 2001)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be *prominently* displayed if this decision is reproduced.

Case No. 00-3528

JOHN H. HARRIS,

Plaintiff-Appellant,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH; AKRON CITY COUNCIL; JOHN VALLE; President of Akron City Council; JOHN DOE; CITY OF AKRON,

Defendants-Appellees.

Case No. 00-3540

JOHN H. HARRIS,

Plaintiff-Appellant,

v.

C. WILLIAM KECK, Director of Health; MICHELE WILLIAMS, LAURA SMART, DWAYNE GROEGOR, KEVIN RAGLE, Sanitarian/Inspectors; STEVEN R. NOME, Supervisor; ROBERT REMMEL, Special Projects Coordinator; AKRON HEALTH DEPARTMENT INSPECTORS/ SANITARIANS,

Defendants-Appellees.

Case No. 00-3544

ANTHONY C. MAURO, individually and as President of Urban Imperial Building and Rental Corporation,

Plaintiff-Appellant,

v.

CITY OF AKRON,

Defendant-Appellee.

Before: SILER and GILMAN, Circuit Judges; DUGGAN, District Judge.*

Pro se plaintiffs Charlie and Jacqueline Harris, Raymond L. Borom, John H. Harris, Harold Harris, and Anthony C. Mauro (proceeding individually and as President of Urban Imperial Building and Rental Corporation) appeal a district court judgment dismissing their consolidated civil rights actions filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 1996, the City of Akron, Ohio ("City") enacted Ordinance No. 769-1996 ("Ordinance") (codified at Akron City Envtl. Health Housing Code, Ch. 150 ("Code")), which provides for, inter alia, the registration and inspection of residential rental property. The plaintiffs all own

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* The Honorable Patrick J. Duggan, United States District Judge for the Eastern District of Michigan, sitting by designation.

rental units governed by the Ordinance. Accordingly, *Charlie and Jacqueline Harris* (Case No. 00-3497) and John Harris and L. Ruth Works (Case No. 00-3528) filed separate pro se suits in federal court in 1996, challenging the constitutionality of the Ordinance; Borom and others (Case No. 00-3511) did likewise in 1997; and Mauro (Case No. 00-3544) did as well in 1998. In May 1998, the aforementioned plaintiffs filed separate amended complaints through counsel, specifically asserting that the Ordinance violated the Fourteenth Amendment.

In December 1998, counsel moved to withdraw upon learning that John Harris possibly had made a personal tape of a court hearing. The district judge held a hearing on the matter and found that Harris had clearly intended to convey the impression that a tape had been made, although it could not be determined whether a tape did exist. The district court thus granted counsel's motion to withdraw, and denied Charlie Harris's request for recusal.

During 1999, the district court denied several requests by Charlie and Jacqueline Harris to amend their complaint. Undeterred, the Harrises filed a pro se complaint with the desired changes in state court. The complaint named various city employees as defendants (Keck, Remmel, Forester, and Apati) and raised claims under the Fourth, Fifth, Seventh, Eighth, and Fourteenth Amendments, as well as state law. The defendants removed the action to federal court and the district court consolidated it with the Harrises' other action (Case No. 00-3497). At about the same time, John Harris and Harold Harris filed a similar state court complaint against some of the same city employees (Keck, Remmel, Williams,

Smart, Groegor, Ragle, and Nome). The complaint also raised claims under the Fourth, Fifth, Seventh, Eighth, and Fourteenth Amendments, and state law. The defendants likewise removed this action to federal court (Case No. 00-3540).

Because the plaintiffs had not properly responded to discovery requests in the face of numerous motions to compel, the City filed a Fed. R. Civ. P. 37(c)(1) motion to exclude any additional evidence presented by the plaintiffs from motions practice and trial. The district court granted the motion and thereafter granted summary judgment in favor of all defendants on March 22, 2000.

The plaintiffs have filed timely appeals and separate briefs; this court granted the defendants leave to file a consolidated brief. In their briefs, the plaintiffs reassert that the Ordinance is unconstitutional because it violates the Fourth Amendment (Case Nos. 00-3497/3511/3528/3540), the Double Jeopardy Clause (Case No. 00-3540), the Sixth Amendment (Case No. 00-3540), the Due Process Clause (Case Nos. 00-3497/3511/3544), and the Equal Protection Clause (Case Nos. 00-3497/3511). Charlie and Jacqueline Harris further contend that the district court erred by granting the City's motion to exclude evidence; Borom argues that the City's implementation of the Ordinance violates the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1951 et seq.; and John Harris raises the issue of judicial bias (Case No. 00-3528). The plaintiffs request oral argument and move for miscellaneous relief.

Initially, we note that the sole appellants properly before the court consist of Charlie and Jacqueline Harris,

Raymond L. Borom, John H. Harris, and Anthony C. Mauro (proceeding individually). L. Ruth Works and Harold Harris failed to sign their respective notices of appeal. *See Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998). Jacqueline Harris is a proper appellant because her spouse signed on her behalf. *See* Fed. R. App. P. 3(c)(1)(A). Mauro may not proceed on behalf of Urban Imperial Building and Rental Corporation, as a corporation must be represented in court by an attorney and may not be represented by an officer. *See Doherty v. Am. Motors Corp.*, 728 F.2d 334, 340 (6th Cir. 1984); *Ginger v. Cohn*, 426 F.2d 1385, 1386 (6th Cir. 1970).

We decline to consider Borom's argument that the City's implementation of the Ordinance violates RICO. Borom did not raise this claim in his complaint, and no exceptional circumstances are present which merit its consideration. *See Enertech Elec., Inc. v. Mahoning County Comm'rs*, 85 F.3d 257, 261 (6th Cir. 1996).

Upon de novo review, we conclude that the district court properly granted summary judgment to the defendants for the reasons stated in its opinion. *See Harrow Prods., Inc. v. Liberty Mut. Ins. Co.*, 64 F.3d 1015, 1019 (6th Cir. 1995).

The Ordinance does not violate the Fourth Amendment as it expressly provides that if entry is refused, an inspection may only be conducted as provided by law, and that the Ordinance shall not be construed to require an owner to consent to a warrantless inspection. *See* Code § 150.02(A); *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 540 (1967). Furthermore, the plaintiffs have provided

no evidence of any warrantless inspection carried out in the absence of both consent and emergency conditions.

The requirement of mandatory inspections following a criminal conviction does not violate the Double Jeopardy Clause as it is a civil sanction which serves the legitimate nonpunitive governmental objective of maintaining safe rental housing. *See Hudson v. United States*, 522 U.S. 93, 98-99 (1997).

The plaintiffs' allegations that the Ordinance has been applied in violation of the Sixth Amendment are too vague and conclusory to state a claim. *See Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987).

The Ordinance does not violate substantive due process as it is a reasonable means of advancing legitimate governmental interests. *See Mansfield Apt. Owners Ass'n v. City of Mansfield*, 988 F.2d 1469, 1477-78 (6th Cir. 1993). In the preamble to the Ordinance, the City Council declared that the Ordinance was necessary because deteriorated rental dwellings with code violations were a threat to new development, housing stock, property values, public health, safety, welfare, and aesthetics. These concerns include legitimate governmental interests. *See, e.g., Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 538 (1993) (public health); *Barnes v. Glen Theatre*, 501 U.S. 560, 569 (1991) (safety); *Metromedia v. City of San Diego*, 453 U.S. 490, 507 (1981) (aesthetics). Furthermore, the Ordinance does not shock the conscience as it does not involve physical force. *See Mansfield Apt. Owners Ass'n*, 988 F.2d at 1478.

The plaintiffs failed to state a procedural due process claim because the Ordinance provides for a state remedy

that comports with procedural due process. *See id.* at 1475. No administrative penalty is assessed until after a notice and Housing Code Order is served on the owner/operator. *See* Code § 150.03(F). An owner/operator may contest a Housing Code Order by, in turn, seeking a hearing and an appeal as of right with the City of Akron Housing Appeals Board, and thereafter by seeking judicial review. *See* Code § 150.05; Ohio Rev. Code § 2506.01.

The Ordinance does not violate the Equal Protection Clause as a rational basis exists for singling out rental property for regulation. *See Marshall v. United States,* 414 U.S. 417, 422 (1974). In the City of Akron, 45% of rental units have code violations as opposed to 17% of owner-occupied units. We note that the plaintiffs provided no evidence that a rational basis did not exist or that the Ordinance was enforced more often against owner/operators who provide low income housing.

The remaining arguments on appeal lack merit as well. The district court did not abuse its discretion by excluding any further evidence from Charlie and Jacqueline Harris as a Rule 37 sanction after they repeatedly failed to provide complete and appropriate responses to discovery requests. *See Beil v. Lakewood Eng'g & Mfg. Co.,* 15 F.3d 546, 551 (6th Cir. 1994).

Likewise, the district judge did not abuse his discretion by failing to recuse himself. The plaintiffs were not entitled to recusal under 28 U.S.C. § 144 because they did not file an affidavit alleging judicial bias in the district court. *See United States v. Sammons,* 918 F.2d 592, 598-99 (6th Cir. 1990). Furthermore, the judge was not obligated to recuse himself pursuant to 28 U.S.C. § 455(a) because

no reasonable person would be convinced that the judge was biased against the plaintiffs. *See id.* at 599. All of the plaintiffs' allegations referred to the judge's participation in the proceedings and do not support recusal. *See id.*

Accordingly, all pending motions are denied, and the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/Leonard Green
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Charlie Harris, et al.,	CASE NOS.
Plaintiffs,	5:96 CV 2711
	5:96 CV 2735
vs.	5:97 CV 1703
	5:98 CV 592
Akron Dept. of Public Health, et al.	5:99 CV 2501
	5:99 CV 2836
Defendants.	JUDGE DAN AARON POLSTER
	MEMORANDUM OF OPINION AND ORDER
	(Filed Mar. 22, 2000)

The above-numbered cases, which have been consolidated for pretrial purposes, are before the Court on the following dispositive motions:

1. Motion for Summary Judgment of Defendant City of Akron, filed on October 4, 1999 ("Defts' First Motion");

2. Motion for Summary Judgment of Defendant City of Akron, filed on December 14, 1999 ("Defts' Second Motion");

3. Motion for Summary Judgment filed by plaintiffs on December 6, 1999; and

4. Motion to Dismiss and for Summary Judgment filed by defendants on March 2, 2000.

Plaintiffs Charlie Harris, Jacqueline Harris, John H. Harris, W. Ruth Works, Raymond L. Barom, Sheila Criner, Fatima Rida, Anthony C. Mauro, individually and as President of Urban Imperial Building and Rental Corporation, and Harold Harris are owners of rental property in the City of Akron. They allege, under 42 U.S.C. § 1983, that the City enacted an ordinance amending Akron's Housing Code that is unconstitutional.[1] Plaintiffs Charlie and Jacqueline Harris also allege that the enactment of the ordinance inflicted mental distress upon them.

II. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). All facts and inferences drawn therefrom must be viewed in a light most favorable to the nonmoving party. *See LaPointe v. United Autoworkers Local 600*, 8 F.3d 376, 378 (6th Cir. 1993). If, after reviewing the record as a whole, a rational factfinder could not find for the nonmoving party, summary judgment is appropriate since there is no genuine issue for trial. *See Matsushita Elec. Indus. Co. v. Zenith*

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[1] The defendants named in the various complaints are the City of Akron and/or its employees, the City Council and/or its members, and the Akron Department of Public Health and/or its employees. All defendants will be referenced as the "defendants" or the "City."

Radio Corp., 475 U.S. 574, 587 (1986). The undisputed facts follow.

II. FACTS

In 1996, the City of Akron enacted Ordinance No. 769-1996, amending the Environmental Health Housing Code, Chapter 150 *et seq.* (the "Ordinance").[2] Prior to this amendment, the Housing Code was enforced in a reactionary manner; i.e., with after-the-fact penalties for Code violations. The amendment to the Code is Akron's attempt to foster a more proactive manner of enforcing the Housing Code and ensuring minimum standards of repair and maintenance, with a particular eye toward rental properties.

The Ordinance requires all owners or operators of rental property in the City of Akron to register annually, on one registration form, all rental units that they own in the city, and to pay a registration fee based on the total number of units registered.[3] *See § 150.30 generally.* The fee begins at $15 for one rental unit, and is capped at $250 for 100 or more rental units. *§ 150.30(G).* The registration fees are based on a calculated budget of $151,000 to staff and run the registration program. *Defts' First Motion, Exhibit C, Affidavit of Gregory A. Ervin (hereafter "Ervin Aff.)* ¶ 4. All registration fees that are collected are deposited in a

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[2] The Ordinance is located in its entirety at Exhibit D of Defts' First Motion.

[3] For simplicity, rental property "owners or operators" will hereafter be referenced collectively as "owners."

segregated account that may only be used to administer the registration program. § *150.30(I); Ervin Aff.* ¶ 4.

Section 150.40 of the Ordinance authorizes mandatory inspections for violations of the Housing Code under limited circumstances. If two or more Housing Code Orders (notices to comply) have been issued to a rental property owner concerning the same premises within a two-year period and the owner fails to comply with the code within the time provided in the notices, the city is required to conduct semi-annual inspections of that particular property for a period of four years. § *150.40(A)(1).* If the owner of a rental unit has been criminally convicted of a Code violation, the City is authorized to conduct semi-annual inspections of *all* that owner's registered rental units for a period of four years. § *150.40(A)(2).*

Service of a Housing Code Order is mandated to provide notice of any Housing Code violations and the need for compliance within a reasonable period of time. § *150.03.* If an owner disagrees with any portion of a Housing Code Order, he or she can file an administrative appeal from the order to the City of Akron Housing Appeals Board and request a hearing to modify or dismiss the order, or to grant an extension of time to comply. § *150.05.* If an owner is not satisfied with the decision of the Appeals Board, he or she may bring a claim against the City in the Summit County Court of Common Pleas, with appeal rights to the Ninth District Court of Appeals, and discretionary appeals to the Ohio and United States Supreme Courts. *Id.*

One criminally charged with a Housing Code violation for the first time who has failed to attain compliance

may avoid criminal prosecution through a Code Enforcement Diversion Program in Akron Municipal Court. Section 150.99(A)-(C) authorizes administrative penalties as an option to criminal prosecution for Code violations that have not been corrected as ordered. Funds generated by the administrative fines are deposited in a segregated account for Housing Code enforcement purposes only. *Ervin Aff.* ¶ *8.*

The City's Housing Inspector is authorized make the mandatory § 150.40 inspections. *§ 150.40.* Under § 150.02(A), the owner or occupant of a dwelling *may* give the Housing Inspector free access to that dwelling. If access is not obtained or refused, the housing inspector may conduct the inspection "only as provided by law." *§ 150.02(A).* "This chapter shall not be construed to require an occupant, operator or owner to consent to a warrantless inspection of a dwelling, rooming house or premises except as provided by law." *Id.* The Housing Division of Akron's Department of Public Health has adopted the Department's Enforcement Policy Training Guidelines and Procedures, which provides a comprehensive, written enforcement policy "that is in accord with the provisions of the United States and Ohio Constitutions." *See Deft's First Motion, Exhibit A, Affidavit of Michael G. Smiley (hereafter "Smiley Aff."), Attachment 2.*

The Ordinance charges a fee for the § 150.40 mandatory inspections that is based on the number of units subject to inspection. *§ 150.40(E).* For example, a fee of $125 is charged for inspecting a premise with one unit, while a fee of $265 is charged for the first rental unit on a premises with five or more units plus $15 per unit for each additional unit on the premises over the first five.

See Id. If an owner subject to mandatory inspections under § 150.40 is still found to be in noncompliance after the first two semi-annual inspections, the owner will be charged $50 for re-inspection of those units until compliance is achieved. *§ 150.40(F).* Based on calculations provided by Akron's Deputy Director of Health, the fees only partially offset the cost of running the inspection program, with the remainder being taken from the general revenues of the City of Akron. *Ervin Aff. ¶ 6.* Inspection fees that are collected are deposited in a segregated account that may only be used to administer the inspection program. *§ 150.40(G); Ervin Aff. ¶ 6.*

* * *

These cases have been a procedural nightmare for two federal judges. The plaintiffs in Case Nos. 5:96CV2711, 5:96CV2735, 5:97CV1703, and 5:98CV592 initially filed separate *pro se* cases alleging that the Ordinance violated the Fourth, Fifth, Sixth, Eighth and/or Fourteenth Amendments of the United States Constitution. Because all plaintiffs were owners of rental property in Akron who challenged the constitutionality of the Ordinance in question, Judge Bell consolidated the cases for pretrial purposes. Due to the complexity of the issues, Judge Bell instructed the plaintiffs to obtain counsel. Counsel filed an amended complaint in each of the cases alleging, under 42 U.S.C. § 1983, that the Ordinance violated only the Fourteenth Amendment. Counsel thereafter withdrew its representation of plaintiffs in circumstances requiring a hearing. All plaintiffs retained new counsel except for Charlie and Jacqueline Harris, who were permitted to proceed *pro se*. Charlie and Jacqueline Harris thereafter made several requests to amend the

complaint, all of which were denied. The rulings were upheld by the Sixth Circuit in an interlocutory appeal.

Charlie and Jacqueline Harris subsequently attempted to subvert these rulings by filing a multi-count complaint in the Summit County Court of Common Pleas, under Case No. CV 1999-09-3674. John and Harold Harris followed suit by filing a virtually identical complaint in the Summit County Court of Common Pleas, under Case No. CV 1999-10-4214. The complaints alleged one federal constitutional claim and three state law claims. Based on subject matter jurisdiction over only one of the four claims (the federal claim), the defendants removed both cases case to this Court, under Case Nos. 5:99CV2501 (Charlie and Jacqueline Harris) and 5:99CV2836 (John and Harold Harris). The removed cases were assigned to Judge James S. Gwin and were later transferred to me as related to the earlier-filed consolidated cases. The removed cases, which targeted unconstitutional conduct dating back to *1991*, were consolidated with the earlier cases because they were no more than an attempt to avoid the Court's prohibition against filing an amended complaint with new claims. Accordingly, these removed cases are also before the Court in this Motion.

The only constitutional claim properly before the Court at this time is the Fourteenth Amendment claim. However, through an abundance of caution or confusion over what claims are in this case, the defendants filed a summary judgment motion addressing numerous constitutional issues. Plaintiffs represented by counsel filed a summary judgment motion arguing only that the Ordinance violates the Fourth Amendment of the U.S.

Constitution. Charlie and Jacqueline Harris filed a memorandum in opposition to the defendants' summary judgment motion alleging that the Ordinance also violates the Fifth, Seventh and Eighth Amendments with mention of the mental distress they have suffered. Defendants filed a second summary judgment motion dealing with the Harrises' mental distress allegation and request for attorney fees.

The Court will address the Fourteenth Amendment claim, the Fourth Amendment claim argued in plaintiffs' summary judgment brief, and Charlie and Jacqueline Harris's mental distress claim addressed in the defendants' second summary judgment motion. Charlie and Jacqueline Harris's Fifth, Seventh and Eighth Amendment allegations, which are echoed in the removed cases, are not properly before the court. Even if they were, they would be dismissed as a matter of law because there is no legal basis for such allegations. The Fifth Amendment requires that a person who is deprived of property by the government must be justly compensated. None of the Harrises allege that their rental properties were condemned, demolished, or ordered vacated. Furthermore, it is well-settled that in a "takings" case, a plaintiff must show that it has exhausted state remedies before resorting to a 42 U.S.C. § 1983 action. *See Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985); *Four Seasons Apartment v. City of Mayfield Heights*, 775 F.2d 150 (6th Cir.1985). Plaintiffs herein have failed to allege or demonstrate the unsuccessful pursuit of an inverse condemnation proceeding in the Ohio courts. The Seventh Amendment, which addresses the right to jury trials, is irrelevant. The Eighth Amendment

prohibits monetary punishments that are grossly disproportional to the gravity of the offense they are designed to punish. Plaintiffs Charlie and Jacqueline Harris have failed to articulate in specific terms how the particular administrative fines established in the Ordinance are constitutionally excessive. Nonetheless, having reviewed the administrative penalties, the Court finds that they are not constitutionally excessive.

III. LAW AND ANALYSIS

A. Fourteenth Amendment Claim

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." There are two components to this Amendment: (1) the Due Process Clause which consists of substantive due process and procedural due process, and (2) the Equal Protection Clause.[4]

1. Equal Protection

In order to determine whether the Ordinance violates the Equal Protection Clause of the Fourteenth Amendment, the Court must decide whether it "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the

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[4] Defendants argue that the claims are not ripe and that the plaintiffs lack standing. The Court will assume for purposes of this Memorandum of Opinion and Order that the plaintiffs do have standing and the claims are ripe.

Constitution." *San Antonio Independent School Dist. V.* [sic] *Rodriguez*, 411 U.S. 1, 17 (1973). If it does, then the Ordinance must be examined with strict scrutiny. *Id.* If not, then the Court must determine whether the Ordinance rationally furthers some legitimate, articulated state purpose. *Id.* Legislation is presumed to be valid, and where "social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).

The regulation of rental properties does not impact a fundamental right, and neither rental property owners nor low income housing owners are a suspect class.[5] *Berry v. City of Little Rock*, 904 F.Supp. 940, 948 (E.D. Arkansas 1995) *citing Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988). Affecting neither a fundamental right nor a suspect class, the Ordinance shall be presumed valid and

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[5] The distinction drawn by the Ordinance between owner-occupied dwellings and rental dwellings is not uncommon. Federal courts have long recognized that residential rental properties require greater governmental health and safety regulations than other types of property, and that such distinctions are rational. *Berry v. City of Little Rock*, 904 F.Supp. 940, 949 (E.D. Arkansas 1995); *Lock Haven Property Owners' Ass'n*, 911 F.Supp. 155, 161 (M.D. Pa. 1995); *Chicago Bd of Realtors v. City of Chicago*, 819 F.2d 732, 740 (7th Cir. 1987). Moreover, defendants have provided undisputed evidence that, historically, rental dwellings are in noncompliance with the Code in far greater numbers than owner-occupied dwellings. *See Defts' First Motion, Exhibit B, Affidavit of Nancy S. Cook and attachments.*

sustained if it rationally furthers some legitimate, articulated governmental purpose. The defendants' espoused purpose in enacting the Ordinance is to provide for active enforcement of the Housing Code, to recoup a substantial portion of the costs of enforcement from the sector that is directly affected by it, and to decriminalize Housing Code violations. *Smiley Aff.* ¶¶ *6, 8*. The Court finds that this purpose is legitimate and that the Ordinance rationally furthers that purpose for the following reasons.

The Ohio Constitution authorizes municipalities to exercise all powers of local self-government and to adopt and enforce within limits such local police, sanitary and other regulations as are not in conflict with general laws. *Oh. Const. Art. XVIII § 3; Wilson v. City of Cincinnati*, 46 Ohio St.2d 138, 141 (1976). Municipalities are expressly empowered to regulate housing for the protection of the health and safety of the occupants. *O.R.C. § 715.29*. The police power may be constitutionally exercised even where it impairs certain property rights or requires that new costs or burdens be associated with the ownership of property. *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 592-93 (1962). Regulations frequently and necessarily interfere with the enjoyment, use, acquisition or possession of property. *State v. Thompkins*, 75 Ohio St.3d 558 (1996); *Wilson*, 46 Ohio St.2d at 142. A regulation having this effect is valid and complies with due process, if it bears a real and substantial relation to the public health, safety and welfare, and is not arbitrary or unreasonable. *Envirosafe Serv. Of Ohio, Inc. v. City of Oregon*, 80 Ohio App.3d 516, 521 (1992).

The Ordinance in question embodies a comprehensive scheme for enforcing Akron's Housing Code. The

registration of rental property is not unique, nor is the requirement of a registration fee. *See Cook Aff. and attachments.* The requirement of mandatory inspections for repeated Code Offenders is not unreasonable nor are the fees and, based upon the impassioned outcry of the plaintiffs, will more likely motivate compliance with the code in the future than occurred in the past. The administrative penalties for noncompliance are not unreasonable and come into play only when the offender has failed to comply after sufficient notice (including the available opportunities for variances, dismissals and extensions of time to comply). While this scheme is more demanding than the previous Ordinance, that alone does not make the Ordinance unconstitutional. *Goldblatt*, 369 U.S. at 592-93.

Plaintiffs argue that the Ordinance unfairly discriminates against low income housing and/or owners of low income housing. This argument has no merit. The Ordinance applies uniformly to all rental units and their owners. Low income housing has not been singled out for registration or inspection. All rental property owners must register their units, and only those owners who are in derogation of the Housing Code in the manner described under §§ 150.40(A)(1) and (2) are subject to mandatory inspections. The apparent purpose of this Ordinance is to encourage the enforcement of minimal standards of maintenance and repair of all dwellings by persons who do not live there but are responsible for maintenance and repair.

The fees established under the Ordinance do not discriminate against low income rental units and/or owners of low income housing. All rental property

owners are subject to the same fees, and the cost of registration is not onerous. *See supra, at 2; § 150.30(G).* Responsible property owners need only be concerned with the annual registration fee. It is only certain rental property owners under § 150.40 who fail to comply with the Housing Code (after availing themselves of a plethora of administrative procedures) who are required to pay the mandatory inspection fees. And those fees only partially offset the cost of enforcing the Code.[6]

The Court finds as a matter of law that the Ordinance serves the legitimate purpose of ensuring that rental housing [sic] Akron is being maintained in compliance with the Housing Code in order to protect the health, safety and welfare of Akron's tenants. *Berry,* 904 F.Supp. at 948-49; *Lock Haven Property Owners' Ass'n v. City of Lock Haven,* 911 F.Supp. 155, 161 (M.D. Pa. 1995).

2. Due Process

a. Substantive Due Process

An ordinance or regulation violates substantive due process if it fails to advance a legitimate governmental interest or if it is an unreasonable means of advancing a

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[6] Plaintiffs argue that the re-inspection fee of $50 is unreasonable. However, as explained *supra, p.5,* that fee only comes into play after the owner fails to comply with the Code *after the first two § 150.40 semi-annual inspections.* The $50 fee is minor in comparison with such flagrant violation of the Housing Code. Plaintiffs also argue that it is unconstitutional to use the unpaid fees as a basis for putting a lien on the property of the owners; yet they provide no legal support for this allegation.

legitimate governmental interest. *Mansfield Apartment Owners Ass'n v. City of Mansfield*, 988 F.2d 1469, 1477 (6th Cir. 1993) *citing Williamson v. Lee Optical*, 348 U.S. 483, 487-88 (1955) (stating that the constitutionality of a law will be upheld if "there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it"). Defendants have shown, and the Court has previously concluded, that the enforcement scheme embodied in the Ordinance is rationally related to Akron's interest in enforcing and decriminalizing its Housing Code. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470 n. 12 (1981) *citing Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124-25 (1978) (holding that a statute which bore a rational relationship to its stated interest under the Equal Protection Clause withstood a substantive due process attack).

Under substantive due process analysis, the validity of the defendants' actions also necessitate a determination of whether the defendants' conduct in enacting the Ordinance "shocks the conscience." *Mansfield Apartment Owners Ass'n*, 988 F.2d at 1477. Applying this standard to legislation is problematic since it is traditionally applied to the conduct of individual government actors. *Id.* Nevertheless, the Court finds that the Ordinance does not shock the conscience because the Ordinance is a legitimate use of legislative authority and it is rationally related to a valid governmental interest. For these reasons, the Court concludes that the Ordinance does not violate substantive due process.

b. Procedural Due Process

The Due Process Clause prohibits the City of Akron from depriving the plaintiffs of their property without due process of law. However, none of the plaintiffs has alleged that it was *deprived* of its rental property (i.e., that the property was condemned, vacated or demolished) or that the available pre-deprivation procedures were constitutionally inadequate. Rather, the plaintiffs allege that the enforcement of the Code, through registration and inspections fees and administrative fines, places additional financial burdens on them. This is insufficient to sustain a procedural due process claim as a matter of law.

Notwithstanding the simple fact that ordering compliance with the Code, requiring registration or mandatory inspections, and implementing administrative fines does not deprive the plaintiffs of their property, the Court finds that there is adequate process provided before the Code is actually enforced. Prior to ordering repairs, inspections, fines or demolition of rental property, the Ordinance requires that a Housing Code Order be served to the affected party notifying it of its noncompliance with a reasonable time to comply, with an administrative appeal of right to the Housing Appeals Board, the Summit County Court of Common Pleas, and the Ninth District Court of Appeals, and discretionary appeals to the Ohio Supreme Court and the United States Supreme Court. See §§ 150.03, 150.031, 150.04, 150.05, 150.051, 150.06; O.R.C. Chapter 2505. Based on the procedures afforded rental property owners, one could conceivably delay the enforcement of a Housing Code Order for a very long time. Plaintiffs have failed to explain how the procedures set forth in the Ordinance are constitutionally

inadequate facially or as applied. Thus, the Court finds that the procedural due process claim cannot survive summary judgment as a matter of law.

B. Fourth Amendment Claim

Plaintiffs claim that the mandatory inspection of the Ordinance, § 150.40, violates the Fourth Amendment prohibition against unreasonable searches. Searches of a premises without a warrant presumptively violate the Fourth Amendment. *O'Brien v. City of Grand Rapids Mich.*, 23 F.3d 990, 997 (6th Cir. 1994) *citing Coolidge v. New Hampshire*, 403 U.S. 443, 474-75 (1971). However, nothing in the Ordinance permits warrantless searches or the presumption of consent to a warrantless search. Indeed, the opposite is true. Section 150.02(A) of the Housing Code expressly provides that an owner or occupant *may* consent to a warrantless inspection, but that consent shall not be presumed. *§ 150.02(A)*. When consent is denied, the housing inspector may conduct an inspection "only as provided by law." *Id.* The Housing Department's Enforcement Policy Training Guidelines and Procedures provide explicit, comprehensive instructions for ensuring that enforcement of the Housing Code comports with the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution. *See Smiley Aff., Attachment 2, §§ IV(A)-(E).*

In short, there is nothing on the face of the Ordinance – or the guidelines for enforcement of the Ordinance – that violates the Fourth Amendment prohibition against unreasonable searches. Plaintiffs have provided no *evidence* that the Ordinance has been applied to them in

violation of the Fourth Amendment. Thus, summary judgment is granted with respect to the Fourth Amendment claim.

3. Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, a plaintiff must establish all of the following four elements: (1) that the actor either intended to cause emotional distress or knew or should have known that the actions taken would result in serious emotional distress; (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered utterly intolerable in a civilized society; (3) that the actor's actions were the proximate cause of plaintiff's psychic injury; and (4) that the mental anguish suffered by plaintiff is serious and of a nature that no reasonable man could be expected to endure it. *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 702 (1994) *citing Pyle v. Pyle*, 11 Ohio App.3d 31, 34 (1991).

This claim cannot survive summary judgment because Charlie and Jacqueline Harris cannot show that the City of Akron enacted the Ordinance for the purpose of inflicting emotional distress on them. Given the Court's conclusion that the Ordinance is reasonably related to a legitimate state interest, the Harrises cannot show that the enactment of the Ordinance was so extreme and outrageous as to go beyond all possible bounds of decency. Moreover, the Harrises have provided absolutely no evidence that they suffered severe mental distress. Summary judgment is, therefore, granted with respect to this claim.

4. Negligent Infliction of Emotional Distress

In order to recover for negligent infliction of emotional distress, the plaintiff must prove that he (1) was a bystander to an accident, (2) reasonably appreciated the peril thereof, and (3) suffered serious and foreseeable emotional distress as a result of his cognizance or fear of the peril. *Tschantz*, 97 Ohio App.3d at 714. Because Charlie and Jacqueline Harris have not alleged any one of these elements, this claim must also fail.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Ordinance 769-1996 does not violate the U.S. Constitution on its face or as applied here. The Court also concludes that Charlie and Jacqueline Harris's claim for mental distress due to enactment of the Ordinance has no merit. Accordingly, summary judgment is granted in favor of the defendants, and the cases are dismissed in their entirety.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
Dan Aaron Polster
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Charlie Harris, et al.,	)	**CASE NOS. 5:96 CV 2711**
Plaintiffs,	)	**5:96 CV 2735**
	)	**5:97 CV 1703**
vs.	)	**5:98 CV 592**
	)	**5:99 CV 2501**
Akron Dept. of Public Health, et al.	)	**5:99 CV 2836**
	)	**JUDGE**
Defendants.	)	**DAN AARON POLSTER**
	)	**JUDGMENT ENTRY**
	)	(Filed Mar. 22, 2000)

For the reasons stated in the Memorandum of Opinion and Order filed contemporaneously with this Judgment Entry, and pursuant to Federal Rule of Civil Procedure 58, it is hereby ORDERED, ADJUDGED AND DECREED that the above-captioned cases are hereby terminated and dismissed as final.

IT IS SO ORDERED.

/s/ **Dan Aaron Polster**
Dan Aaron Polster
United States District Judge

APPENDIX C

00-3497/3528/3540

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLIE HARRIS, ET AL. (00-3497); JOHN H. HARRIS (00-3528/3540),	)	ORDER
Plaintiff-Appellant,	)	(Filed Jul. 25, 2001)
v.	)	
AKRON DEPARTMENT OF PUBLIC HEALTH, ET AL. (00-3497/3528); C. WILLIAM KECK, DIRECTOR OF HEALTH, ET AL. (00-3540),	)	
Defendants-Appellees.	)	

BEFORE: SILER and GILMAN, Circuit Judges; and DUGGAN,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

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* Hon. Patrick J. Duggan, United States District Judge for the Eastern District of Michigan, sitting by designation.

petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

Leonard Green
Leonard Green, Clerk

APPENDIX D

Housing & Health and Social Service

SECOND
SUBSTITUTE OFFERED
AS AN AMENDMENT

(Filed Nov. 15, 1996)

MR/BDK/bdk

November 14, 1996

Offered by Valle and Fusco, Mittiga, Portis, Conti, Bolden, Sommerville, & Williams

ORDINANCE NO. 769-1996 amending and/or supplementing Title 15, Chapter 150 of the Code of Ordinances to clarify and supplement provisions establishing minimum standards for the maintenance and condition of dwelling premises in the city, establishing a mandatory rental unit registration program, establishing a mandatory rental unit mandatory inspection program, and directing City departments to take action as is necessary to implement the programs; and declaring an emergency.

WHEREAS, there currently are dwelling premises in the City that are deteriorated due to lack of maintenance; and

WHEREAS, there currently are dwelling premises in the City that are in violation of the City Health, Safety, and Sanitation Code, Litter Code, Housing Code, and Zoning Code; and

WHEREAS, these dwelling premises in the City that are deteriorated due to a lack of maintenance and in violation of the City Health, Safety, and Sanitation Code,

Litter Code, Housing Code, and Zoning Code are a threat to new development, the housing stock, property values and the public health, safety, welfare and aesthetics; and

WHEREAS, improvement of the condition of dwelling premises that are deteriorated will be in the highest and best interest of the citizens of the City in stimulating new development, maintaining the housing stock, increasing property values and promoting the public health, safety, welfare and aesthetics; and

WHEREAS, the majority of these dwelling premises in the City that are deteriorated due to a lack of maintenance and in violation of the City Health, Safety, and Sanitation Code, Litter Code, Housing Code, and Zoning Code are rental units; and

WHEREAS, the condition of rental units the City that are deteriorated due to a lack of maintenance and in violation of the City Health, Safety, and Sanitation Code, Litter Code, Housing Code, and Zoning Code demand a more proactive means of Code Enforcement; and

WHEREAS, the Council of the City deems that dwelling premises that are deteriorated are nuisances and harmful to the public health, safety, general welfare and aesthetics.

NOW, THEREFORE, BE IT ENACTED by the Council of the city:

Section 1. That Title 15 "Land Usage", Chapter 150 "Environmental Health Housing Code" of the Code of Ordinances of the city, 1985 be and is hereby amended and/or supplemented to read as follows:

Chapter 150: ENVIRONMENTAL HEALTH HOUSING CODE

Section

150.01 Definitions.
150.011 APPLICATION OF OTHER CODES.
150.02 Entry and Inspection.
150.03 Notice of Violation.
150.031 Notice of Violation Requiring Demolition.
150.04 Housing Appeals Board.
150.05 Hearings.
150.051 REPAIR, VACATION AND DEMOLITION; PROCEDURE; REMEDY OF CITY FOR NONCOMPLIANCE.
150.06 Director of Health.
150.07 Dwellings; Requirements.
150.08 Equipment and Facilities.
150.09 Light, Ventilation, Electricity, and Heating.
150.10 General Maintenance.
150.11 Space, Use, and Location Requirements.
150.12 Responsibility of Owners and Occupants.
150.13 Rooming Houses; Equipment and Facilities.
150.14 Hotels.
150.15 Unfit Dwellings or Premises.
150.16 Vacating Unfit Dwellings or Premises.
150.17 Public Nuisance.
150.18 **CONDEMNATION** Placard.
150.20 Reoccupation.
150.201 ENTERING A CONDEMNED DWELLING.
150.21 Discontinuance of Utilities.
150.22 Vacant Dwelling
150.23 Removal of Placard.
150.24 Conflict and Invalidity.
150.25 WARRANTIES AND LIABILITY.
150.30 REGISTRATION REQUIRED.
150.31 TRANSFER OF REGISTRATION.

150.40 RENTAL UNIT MANDATORY INSPECTION REQUIRED.
150.50 OPERATOR REQUIRED.
150.99 Penalty.

§150.01 DEFINITIONS.

(A) For the purpose of this Chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

"BASEMENT." A portion of a building located partly **OR WHOLLY** underground.

"DWELLING." Any dwelling, dwelling unit, building, structure, rooming house, rooming unit, hotel, or other living quarters used or **DESIGNED** to be used, in whole or in part, for living or sleeping by human occupants, except that temporary housing, as hereinafter defined, shall not be regarded as a dwelling.

"DWELLING UNIT." Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or **DESIGNED** to be used for living, sleeping, cooking, and eating.

"EXTERMINATION." The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal pest elimination methods approved by the Department of Public Health.

"FIRE PREVENTION." CHAPTER 93 OF THIS CODE.

"FIRE STAIRS." An exterior stairway 22" wide with handrails, and guardrails with intermediate balusters with access from either a 30" wide exterior or an emergency escape window with a 44" interior sill height, 20" minimum width, 24" minimum height with a total of 5.7 square foot minimum and with wired-glass opening protection provided for all windows both above and below the path of the stairway.

"GARBAGE." The animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

"HABITABLE ROOM." A room or enclosed floor space used or **DESIGNED** to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, or communication corridors, closets, and storage spaces.

"HEALTH, SAFETY AND SANITATION CODE." CHAPTER 94 OF THIS CODE.

"HOUSING CODE." The Environmental Health Housing Code.

"HOUSING INSPECTOR." The Director of Health of the City or his authorized representative.

"INFESTATION." The presence, within or around a dwelling, of any insects, rodents, or other pests.

"LITTER CODE." CHAPTER 95 OF THIS CODE.

"MULTIPLE DWELLING." Any dwelling containing more than two dwelling units.

"OCCUPANT." Any person over one year of age living, sleeping, cooking, **OR** eating in, or having actual possession of, a dwelling unit or rooming unit.

"OPERATOR." Any person who, **ALONE OR JOINTLY OR SEVERALLY WITH OTHERS,** has charge, care, or control of **ANY PREMISES,** or part thereof, in which **THERE ARE ONE OR MORE** dwelling units or rooming units, **WHETHER AS OWNER, MANAGER, AGENT OF THE OWNER, OR DUE TO CONDUCT THAT DEMONSTRATES THE PERSON'S POSITION OF RESPONSIBILITY CONCERNING THE DWELLING OR ROOMING UNIT.**

"Owner." Any person who, alone or jointly or severally with others:

Has legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof, or

IS THE VENDOR OR VENDEE under **A** land contract, **WHETHER RECORDED OR NOT, IS THE** executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the **EITHER THE PERSON WITH LEGAL TITLE OR THE LAND CONTRACT VENDOR OR VENDÉE.** Any such person shall be bound to comply with the provisions of this Chapter and **WITH THE** rules and regulations adopted pursuant thereto.

"PERSON." An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency, or any entity recognized by law.

"PLUMBING." All of the following supplied facilities and equipment: gas pipes, gas-burning equipment,

water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents, and any other similar supplied fixtures, together with all connections installed or connected to water, sewer, or gas lines.

"PREMISES." Not only the dwelling and any other building of any kind or nature located on the lot, but also the entire parcel of land surrounding **THE** buildings, including, but not limited to, fences, walkways, walls, and appurtenances.

"PURCHASER." ANY PERSON WHO, ALONE OR JOINTLY OR SEVERALLY WITH OTHERS, HAS A [sic] **ENTERED INTO A CONTRACT TO BECOME THE OWNER OF ANY DWELLING OR DWELLING UNIT, WITH OR WITHOUT ACCOMPANYING ACTUAL POSSESSION THEREOF.**

"RENTAL UNIT." A DWELLING UNIT NOT OCCUPIED BY THE PERSON WITH LEGAL TITLE.

"ROOMING HOUSE." Any dwelling, or that part of any dwelling, containing one or more rooming units, including hotels, in which space is let by the owner or operator to three or more persons who are not husband, wife, son, daughter, mother, father, sister, or brother of the owner or operator.

"ROOMING UNIT." Any room or group of rooms forming a single habitable unit used or **DESIGNED** to be used for living and sleeping but not for cooking or eating purposes.

"RUBBISH." Combustible and noncombustible waste materials, except garbage, including the residue from the burning of wood, coal, coke, and other combustible material, paper, rags, cartons, boxes, wood excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, plastics, dust, and other like materials.

"SUPPLIED." paid for, furnished, or provided by, or under the control of, the owner or operator.

"TEMPORARY HOUSING." Any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than 30 consecutive days.

"ZONING CODE." CHAPTER 153 OF THIS CODE.

(B) Whenever the words *"DWELLING," "DWELLING UNIT," "ROOMING UNIT,"* or *"PREMISES"* are used in this Chapter, they shall be construed as though they were followed by the words "OR ANY PART THEREOF."

§150.011 APPLICATION OF OTHER CODES.

(A) THERE IS HEREBY ADOPTED AS PART OF THE REQUIREMENTS OF THIS CHAPTER, FOR THE PURPOSE OF PROVIDING GUIDANCE AND STANDARDS IN THE APPLICATION AND ENFORCEMENT OF THIS CHAPTER, AND IN THE APPROVAL OF CONDITIONS OF PREMISES, THE PROVISIONS OF THE BOCA NATIONAL PROPERTY MAINTENANCE

CODE, 1993 EDITION, OR AS MAY BE AMENDED FROM TIME TO TIME, THE CITY OF AKRON FIRE PREVENTION CODE, CHAPTER 93, THE BOCA NATIONAL BUILDING CODE, 1993 EDITION, OR AS MAY BE AMENDED FROM TIME TO TIME, THE CITY OF AKRON BUILDING CODE, CHAPTER 190, AND THE BOCA NATIONAL FIRE CODE, 1993 EDITION, OR AS MAY BE AMENDED FROM TIME TO TIME.

(B) WHERE DIFFERENCES OCCUR BETWEEN THE PROVISIONS IN THIS CHAPTER AND THE PROVISIONS THAT THIS SECTION ADOPTS, THE PROVISIONS THAT IMPOSE THE HIGHER STANDARDS SHALL CONTROL.

§150.02 ENTRY AND INSPECTION

(A) The Housing Inspector is authorized and directed to make inspections to determine the conditions of dwellings, rooming houses and premises located within the City. For the purpose of making **THE** inspections, the Housing Inspector is authorized to enter, examine, and survey, at all reasonable times, all dwellings, dwelling units, rooming units, and premises. The owner or occupant of every dwelling or rooming house or the person in charge thereof, on request of the Housing Inspector, may give the Housing Inspector free access to **THE** dwelling or rooming house and its premises, at all reasonable times, for the purpose of **THE** inspection, examination, and survey. **IF ENTRY IS REFUSED OR NOT OBTAINED, THE HOUSING INSPECTOR SHALL CONDUCT THE INSPECTION ONLY AS PROVIDED**

BY LAW. THIS CHAPTER SHALL NOT BE CONSTRUED TO REQUIRE AN OCCUPANT, OPERATOR OR OWNER TO CONSENT TO A WARRANTLESS INSPECTION OF A DWELLING, ROOMING HOUSE OR PREMISES EXCEPT AS PROVIDED BY LAW.

(B) Every occupant of a dwelling or rooming house shall give the owner thereof, or his agent or employee, access to any part of **THE** building or its premises, at all reasonable times, for the purpose of making **THE** repairs or alterations as are necessary to effect compliance with the provisions of this Chapter, or with any lawful rule or regulation adopted or any lawful order issued pursuant thereto.

§150.03 NOTICE OF VIOLATION

Whenever the Housing Inspect**OR** determines that there has been a violation of any of the provisions of this Chapter, he shall give notice of **THE** violation to the person responsible therefor and order compliance, as herein provided. **THE** notice and order shall:

(A) Be put in writing on an appropriate form **AS THE DEPARTMENT OF PUBLIC HEALTH SHALL DETERMINE;**

(B) Include a list of violations, refer to the section**S AND DIVISIONS** violated and order remedial action which will effect compliance with the provisions of this Chapter;

(C) Specify a reasonable time within which to comply; and

(D) Be served on the **OPERATOR**, owner, **OR** occupant, **PERSONALLY**. However, **THE** notice and order **TO COMPLY** shall be deemed to be properly served on **THE OPERATOR**, owner, **OR** occupant, if a copy is sent by certified mail **AND REGULAR MAIL TO THE PERSON'S RESIDENCE, REGULAR PLACE OF BUSINESS OR** last known address, **AND** a copy is posted in a conspicuous place in or on **THE PERSON'S RESIDENCE, REGULAR PLACE OF BUSINESS, LAST KNOWN ADDRESS, OR** the building affected.

WHENEVER A PERSON VIOLATES OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS CHAPTER, THE HOUSING INSPECTOR SHALL HAVE THE AUTHORITY TO IMPOSE AN ADMINISTRATIVE PENALTY. THE HOUSING INSPECTOR SHALL CONSIDER THE FOLLOWING CRITERIA IN ASSESSING AN ADMINISTRATIVE PENALTY:

(1) THE EXTENT TO WHICH THE PERSON HAS BENEFITED BY THE VIOLATION OF THIS CHAPTER;

(2) THE DEGREE OF HARM TO THE PUBLIC HEALTH, SAFETY, WELFARE AND AESTHETICS AS A RESULT OF THE VIOLATION OF THIS CHAPTER;

(3) THE RECIDIVISM OF THE PERSON, INCLUDING PREVIOUS NOTICE AND ORDERS TO COMPLY AND PREVIOUS ENFORCEMENT ACTION;

(4) GOOD FAITH EFFORTS OF THE PERSON TO REMEDY THE VIOLATION OF THIS CHAPTER; AND

(5) THE DURATION OF THE VIOLATION AFTER A NOTICE AND ORDER TO COMPLY WAS SERVED PURSUANT TO THIS SECTION OR SECTION 150.031.

(F) THE IMPOSITION OF AN ADMINISTRATIVE FINE SHALL BE ACCOMPLISHED ONLY AFTER A NOTICE AND ORDER IS PROVIDED TO THE OCCUPANT, OPERATOR OR OWNER. NOTICE OF A DECISION IMPOSING AN ADMINISTRATIVE FINE SHALL:

(1) BE PUT IN WRITING ON AN APPROPRIATE FORM AS THE DEPARTMENT OF PUBLIC HEALTH SHALL DETERMINE;

(2) STATE THE BASIS FOR THE ADMINISTRATIVE PENALTY, INCLUDING THE SECTION OF THIS CHAPTER THAT HAS BEEN VIOLATED;

(3) SPECIFY THE DATE AND MANNER BY WHICH THE PENALTY MUST BE PAID; AND

(4) BE SERVED ON THE OCCUPANT, OPERATOR OR OWNER PERSONALLY. HOWEVER, THE NOTICE AND ORDER TO COMPLY SHALL BE DEEMED TO BE PROPERLY SERVED ON THE PERSON, OCCUPANT, OPERATOR OR OWNER IF A COPY IS SENT BY CERTIFIED MAIL AND REGULAR MAIL TO THE PERSON'S RESIDENCE, REGULAR PLACE OF BUSINESS OR LAST KNOWN ADDRESS, AND A COPY IS POSTED IN A CONSPICUOUS PLACE IN OR ON THE PERSON'S RESIDENCE, REGULAR PLACE OF BUSINESS, LAST KNOWN ADDRESS, OR THE DWELLING AFFECTED.

§150.031 NOTICE OF VIOLATION REQUIRING DEMOLITION.

Whenever the Housing Inspector determines that the violations of this Chapter are so extensive that the City will demolish or repair the dwelling and premises due to the dwelling **OR PREMISES** being insecure, unsafe, or structurally defective, the notice and order shall:

(A) Be written on an appropriate form **AS THE DEPARTMENT OF PUBLIC HEALTH SHALL DETERMINE;**

(B) Include a list of violations, refer to the sectionS **AND DIVISIONS** violated, and order remedial action which will affect compliance with the provisions of this Chapter;

(C) Specify a reasonable time within which to comply;

(D) Be served upon all persons listed in the Summit County Recorder's Office and the Summit County Clerk of Courts having an interest or holding a lien on the dwelling or premiseS; and

(E) Contain notice that the City intends to demolish or repair the dwelling and premises and assess costs to the owners of record, and that persons notified under this section may request a hearing before the Housing Appeals Board pursuant to § 150.05**(A) OF THIS CHAPTER.**

§150.04 HOUSING APPEALS BOARD.

(A) **THE BOARD.** There is created a Housing Appeals Board. The words the Board or Board, as used in this Chapter, mean the Housing Appeals Board. The Board shall consist of five regular members, who shall be appointed by the Mayor, by and with the consent of Council, for overlapping terms of three years, and they shall serve until a successor is appointed. The Mayor shall also appoint two alternate members of the Board, by and with the consent of Council, the alternates who shall be from the same classifications as set forth in division (B) hereof, to serve terms of three years.

(B) Members. Members of the Board shall be citizens of the United States and residents of the City. Membership shall constitute a representative group composed of the following: a homemaker, a member of the labor force, a businessperson, and a member of the medical profession or another profession. In the event of the inability of a member to attend a forthcoming meeting, either alternate member of the Board may serve in the place and stead of the member of the Board who are absent with the same power and authority as a regular member until THE member has resumed his duties. **THE SALARY OF EACH MEMBER OF THE BOARD SHALL BE $75.00 PER MEETING ATTENDED.**

(C) Rules of procedure; quorum. The Board shall adopt rules of procedure consistent with this Chapter and elect THE officers as the Board deems necessary. No member of the Board shall take part in any hearing or determination in which he has a personal or financial

interest. Three members of the Board in attendance at any meeting shall constitute a quorum.

(D) FREQUENCY OF MEETINGS. THE BOARD SHALL MEET AT LEAST ONCE DURING EVERY MONTH OF THE YEAR.

§ 150.05 HEARINGS.

(A) **APPEALS.** For the purpose of this section, *"PERSON"* shall include any entity which owns, leases, holds or has any interest in a dwelling or premises in the City. Any person affected by any notice and order which has been issued in connection with the enforcement of any of the provisions of this Chapter may request and shall be granted a hearing on the matter before the Board. **THE** person shall file, in the office of the Director of Health, a written request for **THE** hearing and shall set forth the name, address, and phone number of the appellant and a brief statement of the grounds for **THE** hearing and appeal from any order of the Director of Health. Requests shall be filed within ten days after the day the notice and order is served and shall be accompanied by a deposit of $15.00, which deposit shall be non-refundable. On receipt of **THE** request, the Director **OF HEALTH** shall set a time and place for a hearing before the Board. The hearing shall be held within a reasonable time after a request has been filed. At **THE** hearing, the appellant shall be given an opportunity to be heard and to show cause why **THE** notice and order should be modified or dismissed, **OR WHY A VARIANCE SHOULD BE**

GRANTED. The failure of the appellant or his representative to appear and present his position at THE hearing shall be grounds for dismissal of THE request.

(B) VARIANCES. THE BOARD SHALL INTERPRET THE INTENT OF THIS CHAPTER IN SPECIFIC CASES WHERE, ON APPEAL, IT CLEARLY APPEARS THAT, BY REASON OF SPECIAL CONDITIONS, UNDUE HARDSHIP WOULD RESULT FROM A LITERAL APPLICATION OF ANY SECTION OF THIS CHAPTER, WHERE UNDUE HARDSHIP IS CLEARLY DEMONSTRATED, THE BOARD MAY PERMIT A VARIANCE FROM THE APPLICABLE SECTION IF THE DWELLING WILL VARY ONLY A REASONABLE MINIMUM FROM THE LITERAL PROVISIONS OF THIS CHAPTER BUT WILL COMPLY WITH THE SPIRIT AND INTENT OF THIS CHAPTER WITH RESPECT TO SANITATION, SAFETY, AND REHABILITATION.

(C) NOTICE. Written notice of the meeting of the Board shall be given by the Director OF HEALTH to the appellant and the citizen complainant. THE notice shall be sent by ordinary U.S. mail at least five days prior to the date of the hearing before the Board. Notice of the agenda to be heard by the Board shall be published in a newspaper of general circulation in the City at least ten days prior to the meeting of the Board. The Law Department of the City shall be notified of the hearing.

(D) DECISIONS. On hearing, the Board may affirm, disaffirm, modify, or dismiss THE notice and order, OR GRANT A VARIANCE FROM THE NOTICE AND ORDER, (by a majority vote of the members of the

Board **WHO ARE** present). The **APPELLANT AND THE** Director **OF HEALTH** shall be notified in writing of **THE** findings.

(E) **RECORDS.** The proceedings at **THE** hearings, including the findings and decision of the Board and reasons therefor, shall be summarized in writing and entered as a matter of public record in the office of the Director **OF HEALTH. THE** record shall also include a copy of every notice and order issued in connection with the matter. Records which pertain to the citizen complainant shall not be considered public records. Any person aggrieved by the decision of the Board may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the state.

§ 150.051 REPAIR, VACATION AND DEMOLITION; PROCEDURE; REMEDY OF CITY FOR NONCOMPLIANCE.

(A) ON RECEIPT OF A REPORT OF THE HOUSING INSPECTOR THAT A PREMISES IS IN VIOLATION OF THIS CHAPTER, THE BOARD SHALL:

(1) GIVE WRITTEN NOTICE TO THE OWNER AND ALL OTHER PERSONS HAVING AN INTEREST IN THE PREMISES, AS SHOWN BY THE LAND RECORDS OF THE SUMMIT COUNTY RECORDER'S OFFICE, TO APPEAR BEFORE THE BOARD ON THE DATE SPECIFIED IN THE NOTICE;

(2) HOLD A HEARING AND HEAR TESTIMONY AS THE HOUSING INSPECTOR, CITIZENS OR THE OWNER OF THE DWELLING OR PREMISES AND ALL OTHER PERSONS HAVING AN INTEREST IN

THE PREMISES, AS SHOWN BY THE LAND RECORDS OF THE SUMMIT COUNTY RECORDER'S OFFICE, OFFER RELATIVE TO THE FITNESS OF THE BUILDING FOR HUMAN HABITATION OR USE;

(3) MAKE WRITTEN FINDINGS OF FACT FROM THE TESTIMONY OFFERED AS TO WHETHER THE DWELLING OR PREMISES IS UNFIT FOR HUMAN HABITATION OR USE; AND

(4) ISSUE AN ORDER BASED UPON THE FINDINGS OF FACT MADE, COMMANDING, IF PROPER, THAT THE DWELLING OR PREMISES IN VIOLATION MUST BE DEMOLISHED WITHIN 30 DAYS. THIS ORDER SHALL BE SERVED ON ALL PERSONS SPECIFIED IN DIVISION (1) OF THIS SECTION. THE ORDER SHALL STATE THAT THE DWELLING OR PREMISES WILL BE DEMOLISHED BY THE CITY, AND THAT THERE IS A RIGHT TO APPEAL THE BOARD'S ORDER PURSUANT TO REVISED CODE CHAPTER 2506.

(B) THE BOARD MAY GRANT A 30 TO 90 DAY EXTENSION TO A PROPERTY OWNER OR INTERESTED PARTY FOR COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER ONLY UPON A SHOWING OF SATISFACTORY ASSURANCE TO THE BOARD THAT THE PROPERTY OWNER OR INTERESTED PARTY HAS THE FINANCIAL AND PRACTICAL CAPABILITY OF INITIATING AND COMPLETING THE REQUIRED REPAIRS TO THE PREMISES WITHIN THE TIME EXTENDED. AFTER ONE 30 TO 90 DAY EXTENSION HAS BEEN GRANTED, ADDITIONAL 30 TO 90 DAY EXTENSIONS FOR REPAIRS

MAY BE GRANTED ONLY UPON A SHOWING TO THE BOARD OF SUBSTANTIAL PROGRESS TOWARD COMPLETION OF REPAIRS AT THE OWNER'S PREMISES. IN THE EVENT OF NONCOMPLIANCE, TO ANY EXTENT, OR PARTIAL REPAIRS TO THE PREMISES BY THE OWNER, THE BOARD MAY AT ANY TIME DECLARE THE PREMISES TO BE A PUBLIC NUISANCE AND DECLARE THAT THE PREMISES BE RAZED.

(C) IF THERE IS NO COMPLIANCE WITH THE BOARD'S ORDER PROVIDED FOR IN THIS SECTION AFTER 30 DAYS, THE BOARD SHALL CAUSE THE DWELLING OR PREMISES TO BE REPAIRED, VACATED, OR DEMOLISHED, AS THE FACTS MAY WARRANT UNDER THE STANDARDS PROVIDED FOR IN THE SECTION AND § 150.15 OF THIS CHAPTER. THE BOARD SHALL ADVISE THE DIRECTOR OF PLANNING AND URBAN DEVELOPMENT AS TO THE PARTICULARS INVOLVED, SO THE APPROPRIATE ACTION MAY BE INSTITUTED TO CAUSE THE DWELLING OR PREMISES TO BE DEMOLISHED. SHOULD THE OWNER FAIL, NEGLECT, OR REFUSE TO PAY THE COSTS SO INCURRED, THE COSTS SHALL BE PAID OUT OF THE CITY TREASURY ON THE CERTIFICATE OF THE DIRECTOR OF PLANNING AND URBAN DEVELOPMENT, AND THE DIRECTOR OF FINANCE SHALL THEN CERTIFY THE AMOUNT SO PAID TO THE AUDITOR OF SUMMIT COUNTY. THE AUDITOR SHALL ENTER THE AMOUNT ON THE TAX DUPLICATE OF THE COUNTY AS A SPECIAL ASSESSMENT AGAINST THE REAL ESTATE ON WHICH THE DWELLING OR

PREMISES REQUIRING THE WORK IS OR WAS SITUATED, AND THE ASSESSMENT SHALL BE COLLECTED AS OTHER TAXES AND ASSESSMENTS AND, WHEN COLLECTED, SHALL BE REFUNDED TO THE CITY.

§ 150.06 DIRECTOR OF HEALTH.

(A) Rules and regulations. The Director of Health is authorized to make and adopt rules and regulations and fix reasonable standards as may be necessary for the proper enforcement of the provisions of this Chapter and to carry out the intent thereof.

(B) Emergency situation. Whenever the Director **OF HEALTH** finds that an emergency exists which requires immediate action to protect the public health, he may, without notice or hearing, issue an order stating the existence of **THE** emergency and requiring that action be taken as he deems necessary to meet the emergency. **THE** order shall be effective immediately. Any person to whom **THE** order is directed shall comply therewith immediately, but on petition to the Director **OF HEALTH**, shall be afforded a hearing as soon as possible. After **THE** hearing, depending on his finding as to whether or not the emergency condition has been abated, the Director **OF HEALTH** shall continue **THE** order in effect or modify or revoke it.

(C) **FAILURE TO OBEY ORDER.** In the event that the person to whom the order is directed neglects or refuses to obey **THE** order, the Director of Health or a properly authorized employee of the Department of

Health is hereby authorized to abate the emergency situation at the expense of **THE** person in noncompliance with the order, **AND TO COLLECT ANY COSTS SO INCURRED AS AUTHORIZED BY LAW.**

§ 150.07 DWELLINGS; REQUIREMENTS.

No person shall occupy, or let to another for occupancy, any dwelling for the purpose of living, sleeping, cooking, or eating therein, which does not comply with all of the requirements of **THIS CHAPTER.**

§ 150.08 EQUIPMENT AND F CILITIES.

(A) Kitchen sink. Each dwelling unit shall contain a kitchen sink in good working condition and connected to a water and sewer system in an approved manner.

(B) Water closet; lavatory. Each dwelling unit shall contain a room affording privacy and equipped with a flush water closet and a lavatory basin in good working condition and connected to a water and sewer system in an approved manner.

(C) Bathrooms. Each dwelling unit shall contain a bathroom affording privacy and equipped with a bathtub or shower in good working condition and connected to a water and sewer system in an approved manner. The rooms mentioned in this division and division (B) of this section may be the same room.

(D) Water lines. Each kitchen sink, lavatory basin and bathtub or shower required under divisions (A), (B), and (C) of this section shall be connected with both hot and cold water lines in an approved manner.

(E) Rubbish storage. Each dwelling unit shall be supplied with adequate rubbish storage facilities in accordance with standards approved by the Housing Inspector.

(F) Garbage disposal. Each dwelling unit shall have adequate garbage disposal facilities in accordance with standards approved by the Housing Inspector.

(G) Water heating. Each dwelling until shall be supplied with water-heating facilities installed in an approved manner, in safe working condition, connected with the hot water lines required under the provisions of § 150.09(D) **OF THIS CHAPTER**, and capable of heating water to such a temperature as to supply water to every connected kitchen sink, lavatory basin, bathtub, or shower at a temperature of not less than 120F. **THE** water-heating facilities shall be capable of meeting the requirements of this section when the dwelling or dwelling unit heating facilities, required under the provisions of § 150.09(E), are not in operation.

(H) Means of egress. Each dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level.

(I) Smoke detectors. Every multiple dwelling shall be equipped with audible smoke detector devices that are properly installed and maintained in an approved manner.

(J) Fire extinguishers. Every multiple dwelling shall be provided with fire extinguishers of a minimum classification and shall be maintained in a safe and approved operating condition.

(K) Fire stairs/sprinkler system. Every multiple dwelling having habitable rooms located on floors exceeding two stories in height above grade, not counting basements, shall be provided with not less than two approved independent exits or exterior fire stairs from each floor above the second floor, fully accessible from each **DWELLING UNIT** on the floor, or as an alternative, the entire dwelling shall be provided with a residential sprinkler system installed in accordance with **NATIONAL FIRE PROTECTION ASSOCIATION STANDARD** #13R.

§ 150.09 LIGHT, VENTILATION, ELECTRICITY, AND HEATING.

(A) Window areas. Every habitable room shall have at least one window or ventilating skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 8% of the floor area of **THE** room. Whenever walls or other portions of structures face a window of any such room and **THESE** light obstruction structures are located less than four feet from the window and extend to a level above that of the ceiling of the room, **THE** window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in the room is a skylight window in the ceiling of **THE** room, the total window area of **THE** skylight shall equal at least 8% of the total floor area of **THE** room.

(B) Ventilation. Every habitable room shall have at least one window or skylight which can easily be opened

or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least 45% of the minimum window area size or minimum skylight window size, as required in division (A) hereof, except where there is supplied some other device affording adequate ventilation according to standards approved by the Housing Inspector.

(C) Bathroom ventilation. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in divisions (A) and (B) hereof, except that no window or skylight shall be required in bathrooms and water closet compartments equipped with a ventilation system kept in operation and complying with standards approved by the Housing Inspector.

(D) Electric requirements. Where there is electric service available from power lines, every habitable room shall contain at least two separate wall-type electric outlets and such additional outlets as may be necessary to supply appliances used therein. Multiple converter plugs permitting two or more appliances to be plugged into the same outlet shall not be used. At least one receptacle of the grounding type shall be installed for connection of laundry appliances. Receptacles installed in or on open porches, breezeways, garages, and the like, which may supply electricity to equipment to be used by persons standing on the ground, shall be of the grounding type. Receptacle outlets in floors shall not be counted as part of the required number of receptacle outlets, unless they are located close to the wall. Every water closet compartment, bathroom, laundry room, furnace room, and public

hall shall contain at least one supplied ceiling or wall-type electric light fixture. **EVERY WATER CLOSET COMPARTMENT AND BATHROOM SHALL CONTAIN AT LEAST ONE SUPPLIED OUTLET. ALL WIRING SYSTEMS,** outlets and fixtures shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a safe approved manner.

(E) Heating facilities.

(1) Every dwelling unit shall be provided with approved heating facilities capable of maintaining an average temperature of 70F. in all habitable rooms, kitchens, bathrooms, and water closet compartments when the outdoor temperature is -5F., without forcing **THE** facilities to operate in excess of their design capacity.

(2) (a) The owner or operator in charge of a dwelling, who rents or leases any dwelling unit therein under an agreement, express or implied, to supply or furnish heat to the occupants thereof, shall supply heat adequate to maintain an inside temperature of not less than 70F. for each hour of the entire 24-hour period of each day in all habitable rooms, bathrooms, water closet compartments, and kitchens, whenever the outside temperature falls below 50F. **THE** inside temperature shall be measured in the approximate center of each room, approximately three feet above the floor, with the following exceptions:

(b) The owner of a hotel or apartment building shall furnish heat sufficient to maintain the following minimum temperatures: between the hours of 6:00 a.m. and 11:00 p.m., 70F.; between the hours of 11:00 p.m. and 6:00 a.m., 65F.

(c) The requirements of this section do not apply to any lobby, corridor, stairway, or other similar area, nor to any room or suite of rooms not occupied by guests or tenants for pay, nor to any room or suite of rooms provided with a separate heating plant under the care and control of the tenant or occupant thereof.

(F) Lighting of halls and stairways. All common halls and stairways in all multiple dwellings containing more that [sic] two dwelling units shall be adequately lighted at all times.

(G) Screening. During that portion of each year when protection is necessary against mosquitoes, flies, or other insects, all doorways opening directly from a dwelling unit to outdoor space shall be supplied with screens and self-closing devices, and all windows or other devices with openings to outdoor space, used or **DESIGNED** to be used for ventilation, shall also be supplied with screens.

(H) Rodent protection. Every basement or cellar window, used or **DESIGNED** to be used for ventilation, and every other opening which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent entry by rodents into the building.

§ 150.10 GENERAL MAINTENANCE.

(A) Foundation, floor, wall, ceiling, roof, chimney, window, door, and premises.

(1) Every foundation, floor, wall ceiling, roof, **AND EAVE** shall be reasonably weathertight, watertight and

rodent-proof and shall be kept in sound working condition and good repair.

(2) ALL Downspouts and gutters shall be properly installed and kept in sound working condition and good repair.

(3) Every window, door, and basement hatchway shall be reasonably weathertight, watertight, and rodent-proof, **SHALL BE CAPABLE OF AFFORDING PRIVACY AND SECURITY,** and shall be kept in sound working condition and good repair.

(4) All exterior surfaces **OF BUILDINGS ON A PREMISES** shall be **CLEAN AND** maintained in good repair so as to provide sufficient covering and protection of the structural surface, underneath against deterioration, **WITH PAINT, STUCCO, ALUMINUM, VINYL SIDING OR OTHER APPROVED EXTERIOR GRADE WATERPROOFING MATERIALS, APPLIED IN AN APPROVED MANNER, AND OF A UNIFORM COLOR AND APPEARANCE TO MATCH OR COMPLEMENT THE OTHER STRUCTURAL SURFACES ON THE PREMISES.** Without limiting the generality of this section, a**N EXTERIOR** surface of a building shall be deemed to be out of repair if **THE** surface is blistered, cracked, flaked, scaled, or chalked away, or is loose or has fallen.

(5) Every chimney, **ANTENNA** and all parts thereof, both exterior and interior, shall be properly installed and maintained **IN** a safe condition and in good repair.

(6) EVERY RETAINING WALL, WALKWAY, SIDEWALK AND DRIVEWAY SHALL BE PROPERLY INSTALLED, MAINTAINED IN A SAFE CONDITION AND IN GOOD REPAIR.

(7) The premises shall be free from hazards and conditions which might create a nuisance.

(B) Stairs and porches. Every inside and outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe for use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair. Where the absence of handrails creates a hazard, they shall be installed in an approved manner.

(C) Plumbing pipes. Every plumbing fixture and water and waste pipe shall be installed in an approved manner and maintained in good sanitary working condition, free from defects, leaks, and obstructions.

(D) **KITCHEN AND** Bathroom floors. Every **KITCHEN FLOOR SURFACE,** water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit **THE** floor to be easily kept in a clean and sanitary condition.

(E) Functioning of equipment. Every supplied facility, piece of equipment, or utility required under the provisions of this Chapter shall be installed in an approved manner and shall be maintained in satisfactory working condition.

§ 150.11 SPACE USE AND LOCATION REQUIREMENTS.

(A) Floor space. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

(B) Sleeping areas. In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70 additional square feet of floor space and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 additional square feet of floor space for each additional occupant thereof.

(C) Bathroom access. No dwelling or dwelling unit containing two or more sleeping rooms shall have such THE rooms arranged such that access to a bathroom or water closet compartment, intended for use by occupants of more than one sleeping room, can be had only by going through another sleeping room, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room, bathroom, or water closet compartment.

(D) Ceiling height. At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet six inches and the floor area of that part of any room where the ceiling height is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(E) Basements. No basement space shall be used as a habitable room or dwelling unit unless:

(1) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness;

(2) The total window area in each room is equal to at least the minimum window area sizes as required in § 150.09(A) **OF THIS CHAPTER;**

(3) **THE** required minimum window area is located entirely above the grade of the ground adjoining **THE** window aera;

(4) The total of openable window area in each room is equal to at least the minimum as required under § 150.09(B) **OF THIS CHAPTER,** except where some other device **IS SUPPLIED** affording adequate ventilation and approved by the Housing Inspector; and

(5) Basement space, when occupied for living, meets all other requirements of a dwelling unit.

§ 150.12 RESPONSIBILITY OF OWNERS AND OCCUPANTS.

(A) Owner to maintain sanitary conditions. Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining, in a clean and sanitary condition, the common or public areas of the dwelling and premises thereof.

(B) Occupant to maintain sanitary conditions. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition and in good repair that part

of the dwelling, dwelling unit, and premises thereof which he occupies and controls.

(C) Disposal of garbage and rubbish. Every occupant of a dwelling or dwelling unit shall dispose of all his garbage, rubbish, and any other organic waste which might provide food for rodents, in a clean and sanitary manner, by placing it in the garbage or rubbish disposal facilities or garbage storage containers required by § 150.08(F) **OF THIS CHAPTER.** It shall be the responsibility of the owner to supply such **THE** facilities or containers for all dwelling units in a dwelling containing more than two dwelling units and for all dwelling units located on premises where more than two dwelling units share the same premises. In all other cases, it shall be the responsibility of the occupant to furnish **THE** facilities or containers.

(D) Screens and storm windows. Every occupant of a dwelling or dwelling unit shall be responsible for hanging all screens, double or storm doors, and windows, whenever the same are required under the provisions of this Chapter or of any rule or regulation adopted pursuant thereto, except where the owner has agreed to supply **THE** service.

(E) Rodent extermination. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for **THE** extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of

this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the common or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

(F) Plumbing fixtures. Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.

§ 150.13 ROOMING HOUSES; EQUIPMENT AND FACILITIES.

No person shall operate a rooming house, or occupy or let to another for occupancy, any rooming unit in any house, except in compliance with the provisions of **THIS CHAPTER.**

(A) Bathroom facilities. At least one flush water closet, lavatory basin, and bathtub or shower, properly connected to a water and sewer system, meeting standards approved by the Housing Inspector and in good working condition, shall be supplied for each six persons or fraction thereof residing within a rooming house, including members of the operator's family whenever they share the use of the facilities. In a rooming house where rooms are let to males, flush urinals may be substituted for not more than one-half of the required number of water closets. All rooming units and water closets shall be so located within the dwelling as to be accessible from

a common hall or passageway to all persons sharing such **THE** facilities. Every lavatory basin and bathtub or shower shall be adequately supplied with hot water at all times. **THE** facilities shall **NOT** be located in a basement except by written approval of the Housing Inspector.

(B) Bedding and towels. The operator of every rooming house shall change supplied bed linen and towels therein at least once each week and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.

(C) Sleeping room area. Every room occupied for sleeping purposes by one person shall contain at least 80 square feet of floor space and every room occupied for sleeping purposes by more than one person shall contain at least 60 square feet of floor space for each additional occupant thereof.

(D) Means of egress. Every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of the state and the City.

(E) Sanitary maintenance. The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings and for maintenance of a sanitary condition in every other part of the rooming house. He shall be responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased or occupied by the operator.

(F) Cooking. Cooking in dormitory rooms and rooming units shall be prohibited.

(G) Access. Access doors to rooming units shall have operating locks to insure privacy.

(H) Heating requirements. the operator of every rooming house shall furnish heat sufficient to maintain an inside temperature of not less than 70F. for each hour of the entire 24-hour period of each day in all habitable rooms, bathrooms, water closet compartments, and kitchens, and be able to maintain this temperature when the outside temperature falls to 50F. or below, except that the operator shall furnish heat sufficient to maintain the following minimum temperatures at the following hours of the day: between the hours of 11:00 p.m. and 6:00 a.m., 65F.

(I) Smoke detectors. Every rooming house shall be equipped with audible smoke detector devices that are properly installed and maintained in an approved manner.

(J) Fire extinguishers. Every rooming house shall be provided with fire extinguishers of a minimum classification and shall be maintained in a safe and approved operating condition.

(K) Fire stairs/sprinkler system. Every rooming house having habitable rooms located on floors exceeding two stories in height above grade, not counting basements, shall be provided with not less than two independent exists or exterior fire stairs from each floor above the second floor, fully accessible from each **DWELLING**

UNIT on the floor, or as an alternative, the entire dwelling shall be provided with a residential sprinkler system installed in accordance with **NATIONAL FIRE PROTECTION ASSOCIATION STANDARD** #13R.

§ 150.14 HOTELS.

Every provision of this Chapter which applies to rooming houses shall also apply to hotels, except to the extent that any provision may be found in conflict with the laws of the state or with the lawful regulations of any state board or agency.

§ 150.15 UNFIT DWELLINGS OR PREMISES.

(A) Any dwelling or premises that are at any time unfit for human habitation or use, unless made habitable, shall be taken down and removed when so ordered by the Housing Inspector.

(B) Any dwelling or premises declared unfit for human habitation or use may be restored to a habitable condition.

(C) Any dwelling or premises which has any of the following defects shall be deemed unfit for human habitation or use:

(1) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded or have insufficient strength to be reasonably safe for the purpose used;

(2) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or other residents of the City;

(3) Those which have become so dilapidated, decayed, unsafe, unsanitary, or vermin infested or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or use or are so likely to cause sickness or disease that their condition constitutes a serious hazard to the health, morals, safety, or general welfare of the occupants or other residents of the City;

(4) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein;

(5) Those having inadequate facilities for ingress and egress in case of fire, panic, or other emergencies, or those having insufficient stairways, elevators, fire escapes, or other means of communication;

(6) Those which have parts thereof which are so attached that THE parts may fall and injure occupants, other residents or other property;

(7) Those which, because of their general condition or location, are unsafe, unsanitary or otherwise dangerous to the health, morals, safety, or general welfare of occupants or other residents of the City; or

(8) Those existing in violation of any of the provisions of the building code, the Fire Prevention Code, or other ordinances of the City.

(D) The Housing Inspector shall use the following standards in ordering a dwelling or premises to be repaired, vacated, or demolished:

(1) When it can reasonably be repaired so that it will no longer exist in violation of any of the provisions of this Chapter, it shall be ordered repaired;

(2) When it is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants, it shall be ordered vacated;

(3) When it is 60% damaged, decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where it cannot be repaired, or where the owner refuses or fails to repair THE dwelling so that it will no longer be in violation of any of the terms of this Chapter, it shall be demolished. In all cases where it is a fire hazard, existing or erected in violation of any of the terms of this Chapter or any ordinances of the City, it shall be demolished.

§ 150.16 VACATING UNFIT DWELLINGS OR PREMISES.

Any dwelling or premises condemned as unfit for human habitation or use, and so designated and placarded by the Housing Inspector, shall be vacated within a reasonable time as ordered by the Housing Inspector.

§ 150.17 PUBLIC NUISANCE.

Any dwelling or premises condemned as unfit for human habitation or use, within the terms of this Chapter, is declared to be a public nuisance, and shall be repaired, vacated, or demolished as provided in this Chapter.

§ 150.18 **CONDEMNATION** PLACARD.

The Housing Inspector shall place a notice on all **CONDEMNED** dwellings or premises by placing a placard thereon, or in a location which is readily noticeable, reading as follows:

CONDEMNED

This building is unfit for human habitation or use and has been condemned by order of the Director of Health of the City of Akron. All persons are herewith warned to stay away from this building, except those who are employed to repair or raze the same in accordance with the notice which has been given the owner of this building and all other persons having an interest in said premises as shown by the land records of the Summit County Recorder's Office. It is unlawful for any person to remove this sign without written permission from the Director of Health of The City of Akron.

§ 150.20 REOCCUPATION.

Any dwelling or premises which has been condemned and placarded as unfit for human habitation or use shall not again be so used until written approval is secured from, and **THE** placard removed by, the Housing Inspector. The Housing Inspector shall remove **THE** placard and give **THE** written approval whenever the defect from which **THE** condemnation and placarding action resulted has been eliminated.

§ 150.201 ENTERING A CONDEMNED DWELLING.

(A) NO PERSON SHALL ENTER ANY DWELLING THAT HAS BEEN CONDEMNED AS UNFIT FOR

HUMAN HABITATION OR USE, AND SO DESIGNATED AND PLACARDED BY THE HOUSING INSPECTOR, AND THAT HAS BEEN VACATED, EXCEPT BETWEEN THE HOURS OF 7:00 A.M. AND 7;00 P.M. FOR THE SPECIFIC PURPOSE OF REPAIRING THE DWELLING, OR SUCH OTHER LAWFUL PURPOSE AS AUTHORIZED BY THE HOUSING INSPECTOR.

(B) ENFORCEMENT OF THIS SECTION SHALL NOT REQUIRE A NOTICE AND ORDER TO COMPLY AS A PREREQUISITE.

§ 150.21 DISCONTINUANCE OF UTILITIES.

No owner, operator, or occupant shall cause any service, facility, equipment, or utility which is required under §§ 150.09(D) and (E) and 150.08(A), (B), (C), (D), and (G), of this code to be removed from, shut off from, or discontinued from any occupied dwelling let or occupied by **THE** owner, operator, or occupant, including by reason of nonpayment, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the Housing Inspector.

§ 150.22 VACANT DWELLING.

No person shall occupy, or let to another for occupancy, any vacant dwelling unless the same is clean, sanitary, and fit for human occupancy.

§ 150.23 REMOVAL OF PLACARD.

No person shall deface or remove the placard provided for in § 150.18 **OF THIS CHAPTER** from any building or premises.

§ 150.24 CONFLICT AND INVALIDITY.

In any case where a provision of this Chapter is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City existing on the effective date of this Chapter, the provision which establishes the higher standard for the promotion of the health and safety of the people shall prevail. In any case, where a provision of this Chapter IS found to be in conflict with a provision of any other ordinance or code of the City existing on the effective date of this Chapter, which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this Chapter shall prevail, and THE other ordinance or code shall be repealed to the extent that IT may be found in conflict with this Chapter.

§ 150.25 WARRANTIES AND LIABILITY.

THE PROVISIONS OF THIS CHAPTER SHALL NOT BE CONSTRUED TO WARRANT, INSURE OR GUARANTEE THAT THERE ARE NO VIOLATIONS OF THE HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, OR ZONING CODE AT A PREMISES, OR THAT THE PREMISES IS IN A CLEAN, SANITARY, SAFE OR FIT CONDITION. INSPECTIONS OF THE DEPARTMENT OF PUBLIC HEALTH ARE MADE ON BEHALF OF THE CITY AND THE DEPARTMENT OF PUBLIC HEALTH FOR THE PURPOSE OF PRESERVING AND IMPROVING THE HOUSING STOCK AND ENFORCING THE HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, AND ZONING CODE. INSPECTIONS OF THE DEPARTMENT OF PUBLIC HEALTH

ARE NOT MADE ON BEHALF OF THE OCCUPANT, OPERATOR, OWNER, OR PURCHASER OF A PREMISES, OR ANY OTHER PERSON.

§ 150.30 REGISTRATION REQUIRED.

(A) AN OWNER OR OPERATOR SHALL REGISTER, ON A REGISTRATION FORM THAT THE DEPARTMENT OF PUBLIC HEALTH SHALL PROVIDE, ALL RENTAL UNITS THAT THE OWNER OWNS, OR THAT THE OPERATOR OPERATES, NO LATER THAN JANUARY 1 OF EACH YEAR, AND UPON THE COMPLETION OF TRANSFER OF TITLE TO A PREMISES OR STRUCTURE WITH A RENTAL UNIT.

(B) THE REGISTRATION FORM SHALL INCLUDE INFORMATION AS THE DEPARTMENT OF PUBLIC HEALTH SHALL DETERMINE, INCLUDING THE TOTAL NUMBER OF RENTAL UNITS THAT THE OWNER OWNS, OR THAT THE OPERATOR OPERATES, THE NUMBER OF PREMISES AND STRUCTURES WITH A RENTAL UNIT, THE ADDRESS OF EACH PREMISES AND STRUCTURE, THE NUMBER OF RENTAL UNITS ON EACH PREMISES AND IN EACH STRUCTURE, THE IDENTIFICATION NUMBER OR LETTER OF ALL RENTAL UNITS ON EACH PREMISES AND IN EACH STRUCTURE, THE DATE, BOOK AND PAGE WHERE THE OWNER'S INTEREST IN EACH PREMISES AND STRUCTURE IS RECORDED WITH THE SUMMIT COUNTY RECORDER'S OFFICE, AND INFORMATION CONCERNING THE OWNER, WHICH SHALL INCLUDE:

(1) IF THE OWNER IS ONE OR MORE INDIVIDUALS OR A SOLE PROPRIETORSHIP, THE OWNER'S NAME, ADDRESS, DATE OF BIRTH AND PHONE NUMBER;

(2) IF THE OWNER IS A PARTNERSHIP, THE NAME, ADDRESS, TAX IDENTIFICATION NUMBER AND PHONE NUMBER OF THE PARTNERSHIP, AND THE NAME, ADDRESS, DATE OF BIRTH AND PHONE NUMBER OF ONE OF THE PARTNERS;

(3) IF THE OWNER IS A CORPORATION, THE NAME, ADDRESS AND PHONE NUMBER OF THE CORPORATION, THE NAME, ADDRESS AND PHONE NUMBER OF THE CORPORATION'S STATUTORY AGENT, AND THE NAME, ADDRESS, DATE OF BIRTH, AND PHONE NUMBER OF ONE OF THE OFFICERS; AND

(4) IF THE OWNER IS A TRUST, THE NAME, ADDRESS AND PHONE NUMBER OF THE TRUST, AND THE NAME, ADDRESS, DATE OF BIRTH, AND PHONE NUMBER OF ONE OF THE TRUSTEES.

(C) IF THE OWNER OF A RENTAL UNIT IS REQUIRED TO HAVE AN OPERATOR PURSUANT TO SECTION 150.50 OF THIS CHAPTER, OR IF THE OWNER OTHERWISE HAS AN OPERATOR THAT IS NOT THE OWNER, THEN THE REGISTRATION FORM SHALL INCLUDE, IN ADDITION TO THE INFORMATION REQUIRED BY DIVISION (B) OF THIS SECTION, ADDITIONAL INFORMATION CONCERNING THE OPERATOR, AS THE DEPARTMENT OF PUBLIC HEALTH SHALL DETERMINE, WHICH SHALL INCLUDE:

(1) IF THE OPERATOR IS ONE OR MORE INDIVIDUALS OR A SOLE PROPRIETORSHIP, THE OPERATOR'S NAME, ADDRESS, DATE OF BIRTH AND PHONE NUMBER;

(2) IF THE OPERATOR IS A PARTNERSHIP, THE NAME, ADDRESS AND PHONE NUMBER OF THE PARTNERSHIP, AND THE NAME, ADDRESS, DATE OF BIRTH AND PHONE NUMBER OF ONE OF THE PARTNERS; AND

(3) IF THE OPERATOR IS A CORPORATION, THE NAME, ADDRESS AND PHONE NUMBER OF THE CORPORATION, THE NAME AND ADDRESS OF THE CORPORATION'S STATUTORY AGENT, AND THE NAME, ADDRESS, DATE OF BIRTH, AND PHONE NUMBER OF ONE OF THE OFFICERS; AND

(4) IF THE OPERATOR IS A TRUST, THE NAME, ADDRESS AND PHONE NUMBER OF THE TRUST, AND THE NAME, ADDRESS, DATE OF BIRTH, AND PHONE NUMBER OF ONE OF THE TRUSTEES.

(D) WITHIN THIRTY DAYS OF ANY CHANGE OF INFORMATION THAT IS REQUIRED ON A REGISTRATION FORM, THE OWNER OR OPERATOR OF A RENTAL UNIT SHALL CONTACT THE DEPARTMENT OF PUBLIC HEALTH, IN WRITING, TO UPDATE THE INFORMATION ON THE REGISTRATION FORM. NO FEE SHALL BE CHARGED FOR THE UPDATING OF INFORMATION ON THE REGISTRATION FORM.

(E) NO OWNER OR OPERATOR SHALL FAIL TO REGISTER, WITH THE DEPARTMENT OF PUBLIC

HEALTH, ALL RENTAL UNITS THAT THE OWNER OWNS OR THAT THE OPERATOR OPERATES.

(F) NO OWNER OR OPERATOR OF A RENTAL UNIT SHALL FAIL TO CONTACT THE DEPARTMENT OF PUBLIC HEALTH, IN WRITING, WITHIN THIRTY DAYS OF ANY CHANGE OF INFORMATION THAT IS REQUIRED ON A REGISTRATION FORM, TO UPDATE THE INFORMATION ON THE REGISTRATION FORM.

(G) A REGISTRATION FEE PER OWNER OR OPERATOR SHALL BE IMPOSED AS FOLLOWS, OR AS THE HEALTH COMMISSION SHALL SUBSEQUENTLY ESTABLISH BY REGULATION:

(1) IF THE OWNER OWNS OR THE OPERATOR OPERATES ONE RENTAL UNIT, A FEE OF $15.00;

(2) IF THE OWNER OWNS OR THE OPERATOR OPERATES TWO TO FIVE RENTAL UNITS, A FEE OF $25.00;

(3) IF THE OWNER OWNS OR THE OPERATOR OPERATES SIX TO TWENTY-FIVE RENTAL UNITS, A FEE OF $75.00;

(4) IF THE OWNER OWNS OR THE OPERATOR OPERATES TWENTY-SIX TO ONE-HUNDRED RENTAL UNITS, A FEE OF $150.00;

(5) IF THE OWNER OWNS OR THE OPERATOR OPERATES ONE-HUNDRED AND ONE OR MORE RENTAL UNITS, A FEE OF $250.00; AND

(6) IF A REGISTRATION FORM IS FILED LATE, AN ADDITIONAL LATE FEE OF $10.00.

(H) MONEY COLLECTED UNDER THIS SECTION SHALL BE USED EXCLUSIVELY FOR RENTAL UNIT REGISTRATION PURPOSES.

(I) A REGISTRATION FORM SHALL BE VALID FOR ONE YEAR, UNLESS:

(1) FALSE INFORMATION IS FURNISHED TO THE DEPARTMENT OF PUBLIC HEALTH IN THE REGISTRATION FORM; OR

(2) A TRANSFER OF TITLE TO A RENTAL UNIT HAS BEEN COMPLETED.

(J) NO PERSON, INCLUDING AN OPERATOR, OWNER, PURCHASER, ESCROW AGENT, OR REALTOR, SHALL PARTICIPATE IN A TRANSFER OF TITLE TO, OR DISPERSE PROCEEDS FROM A TRANSFER OF TITLE TO, A PREMISES WITH A RENTAL UNIT, WITHOUT HAVING IN ESCROW WITH THE ESCROW AGENT HANDLING THE TRANSFER OF TITLE TO THE PREMISES, A COPY OF A REGISTRATION FORM COMPLETED BY THE PURCHASER OF THE PREMISES.

§150.31 TRANSFER OF REGISTRATION.

A REGISTRATION FORM MAY NOT BE TRANSFERRED TO THE PURCHASER OF A PREMISES WITH A RENTAL UNIT, AND SHALL BE VOID UPON THE COMPLETION OF TRANSFER OF TITLE TO THE PREMISES.

§150.40 RENTAL UNIT MANDATORY INSPECTION REQUIRED.

(A) THE OWNER OR OPERATOR OF A PREMISES WITH A RENTAL UNIT SHALL HAVE THE INTERIOR AND EXTERIOR OF THE PREMISES, ITS STRUCTURES AND ITS RENTAL UNITS INSPECTED SEMI-ANNUALLY, FOR A MINIMUM OF FOUR YEARS, TO DETERMINE COMPLIANCE WITH THE HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, AND ZONING CODE, UNDER THE FOLLOWING CIRCUMSTANCES:

(1) IF TWO OR MORE NOTICES AND ORDERS TO COMPLY HAVE BEEN ISSUED TO THE OWNER OR OPERATOR PURSUANT TO SECTION 150.03 OR SECTION 150.031 OF THIS CHAPTER, WITHIN ANY TWO YEAR PERIOD, CONCERNING THE SAME PREMISES, AND HAVE NOT BEEN COMPLIED WITHIN THE TIME PROVIDED IN THE NOTICES AND ORDERS TO COMPLY, THE PREMISES THAT WAS THE SUBJECT OF THE NOTICES AND ORDERS TO COMPLY SHALL BE SUBJECT TO SEMI-ANNUAL MANDATORY INSPECTIONS AS SPECIFIED IN THIS SECTION; AND

(2) IF THE OWNER OR OPERATOR HAS BEEN CONVICTED OF A VIOLATION OF THIS CHAPTER, ALL PREMISES AND STRUCTURES WITH A RENTAL UNIT THAT THE OWNER OWNS OR THAT THE OPERATOR OPERATES SHALL BE SUBJECT TO SEMI-ANNUAL MANDATORY INSPECTIONS AS SPECIFIED IN THIS SECTION.

(B) A NOTICE AND ORDER TO COMPLY THAT IS OUTSTANDING THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, OR THAT IS ISSUED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS ORDINANCE, MAY CONSTITUTE AN UNCOMPLIED NOTICE AND ORDER TO COMPLY FOR PURPOSES OF ENFORCEMENT OF THE SEMI-ANNUAL MANDATORY INSPECTIONS REQUIRED BY DIVISION (A)(1) OF THIS SECTION.

(C) A CONVICTION THAT WAS OBTAINED WITHIN ONE YEAR PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE, OR THAT WAS OBTAINED BASED ON A NOTICE AND ORDER TO COMPLY THAT WAS OUTSTANDING AT THE TIME OF THE EFFECTIVE DATE OF THIS ORDINANCE, OR THAT IS OTHERWISE OBTAINED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS ORDINANCE, SHALL CONSTITUTE A CONVICTION FOR PURPOSES OF ENFORCEMENT OF THE SEMI-ANNUAL MANDATORY INSPECTIONS REQUIRED BY DIVISION (A)(2) OF THIS SECTION.

(D) NO OWNER OR OPERATOR OF A PREMISES WITH A RENTAL UNIT SHALL FAIL TO OBTAIN A RENTAL UNIT MANDATORY INSPECTION FROM THE DEPARTMENT OF PUBLIC HEALTH WHEN THE PROVISIONS OF THIS SECTION REQUIRE A RENTAL UNIT MANDATORY INSPECTION.

(E) A RENTAL UNIT SEMI-ANNUAL MANDATORY INSPECTION FEE, PER RENTAL UNIT, WHICH SHALL INCLUDE THE FIRST TWO INSPECTIONS

SEMI-ANNUALLY, SHALL BE IMPOSED AS FOLLOWS, OR AS THE HEALTH COMMISSION SHALL SUBSEQUENTLY ESTABLISH BY REGULATION:

(1) A FEE OF $125.00 FOR A PREMISES WITH ONE RENTAL UNIT;

(2) A FEE OF $175.00 FOR A PREMISES WITH TWO RENTAL UNITS;

(3) A FEE OF $225.00 FOR A PREMISES WITH THREE RENTAL UNITS;

(4) A FEE OF $250.00 FOR A PREMISES WITH FOUR RENTAL UNITS; AND

(5) A FEE OF $265.00 FOR THE FIRST RENTAL UNIT ON A PREMISES WITH FIVE OR MORE RENTAL UNITS, AND A FEE OF $15.00 PER RENTAL UNIT FOR EACH ADDITIONAL RENTAL UNIT ON THE PREMISES.

(F) A RENTAL UNIT MANDATORY INSPECTION RE-INSPECTION FEE, PER RENTAL UNIT, FOR EACH RE-INSPECTION SEMI-ANNUALLY SUBSEQUENT TO THE FIRST TWO INSPECTIONS SEMI-ANNUALLY, PER RENTAL UNIT, SHALL BE IMPOSED IN THE AMOUNT OF $50.00, OR AS THE HEALTH COMMISSION SHALL SUBSEQUENTLY ESTABLISH BY REGULATION.

(G) MONEY COLLECTED UNDER THIS SECTION SHALL BE USED EXCLUSIVELY FOR RENTAL UNIT MANDATORY INSPECTION PURPOSES.

§150.50 OPERATOR REQUIRED.

THE OWNER OF A RENTAL UNIT WHO DOES NOT RESIDE IN, HAVE A PLACE OF BUSINESS IN, OR HAVE A STREET MAILING ADDRESS IN SUMMIT COUNTY OR A CONTIGUOUS COUNTY, SHALL HAVE AN OPERATOR WHO RESIDES IN, HAS A PLACE OF BUSINESS IN, OR HAS A STREET MAILING ADDRESS IN SUMMIT COUNTY OR A CONTIGUOUS COUNTY.

§150.99 PENALTY.

(A) ADMINISTRATIVE PENALTIES. IN ADDITION TO ANY CRIMINAL PENALTIES THAT MAY BE IMPOSED PURSUANT TO DIVISION (D) OF THIS SECTION, ANY PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO VIOLATES OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS CHAPTER SHALL BE SUBJECT TO FOLLOWING ADMINISTRATIVE PENALTIES IN ACCORDANCE WITH THE CRITERIA STATED IN §150.03(E) OF THIS CHAPTER:

(1) FOR A FIRST OFFENSE, AN ADMINISTRATIVE FINE OF UP TO $100.00.

(2) FOR A SECOND OFFENSE, AN ADMINISTRATIVE FINE OF UP TO $500.00.

(3) FOR A THIRD OFFENSE, AN ADMINISTRATIVE FINE OF UP TO $1000.00.

(B) IF A PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER FAILS, NEGLECTS OR REFUSES TO PAY AN ADMINISTRATIVE PENALTY

WITHIN THE TIME ORDERED PURSUANT TO §150.03 OF THIS CHAPTER, THEN THE DIRECTOR OF HEALTH SHALL SO NOTIFY THE DIRECTOR OF FINANCE. THE DIRECTOR OF FINANCE SHALL CERTIFY THE ADMINISTRATIVE PENALTY TO THE COUNTY AUDITOR. IN ADDITION TO THE ADMINISTRATIVE PENALTY, AN INTEREST RATE EQUAL TO THE CURRENT RATE OF INTEREST CHARGED BY THE CITY ON SPECIAL ASSESSMENTS SHALL BE IMPOSED BY THE CITY FOR THE LIFE OF THE ADMINISTRATIVE PENALTY, ADDED TO THE ADMINISTRATIVE PENALTY, AND COLLECTED AS PROVIDED IN THIS SECTION. THE DIRECTOR OF FINANCE SHALL THEN CERTIFY THE AMOUNT OF THE ADMINISTRATIVE PENALTY, INCLUDING INTEREST, TO THE COUNTY AUDITOR. THE COUNTY AUDITOR SHALL ENTER THE AMOUNT ON THE TAX DUPLICATE OF THE COUNTY AS A SPECIAL ASSESSMENT AGAINST THE PERSON'S REAL ESTATE AT ISSUE.

(C) MONEY COLLECTED UNDER DIVISIONS (A) AND (B) OF THIS SECTION SHALL BE USED EXCLUSIVELY FOR HOUSING CODE ENFORCEMENT PURPOSES.

(D) CRIMINAL PENALTIES. IN ADDITION TO ANY ADMINISTRATIVE PENALTIES THAT MAY BE IMPOSED PURSUANT TO DIVISION (A) OF THIS SECTION, ANY PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO violates or fails to comply with any of the provisions of this Chapter SHALL BE guilty of a misdemeanor of the third degree and shall be fined not more than $500.00 or imprisoned not more than

60 days, or both, AND SHALL, IN ADDITION TO ANY OTHER PENALTIES WITHIN THESE MAXIMUM AMOUNTS, BE SUBJECT TO IMPOSITION OF THE FOLLOWING MINIMUM MANDATORY PENALTIES, WHICH SHALL NOT BE SUSPENDED OR HELD IN ABEYANCE:

(1) A PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO HAS NOT PREVIOUSLY BEEN CONVICTED OF ANY VIOLATION OF A SECTION OF THE FIRE PREVENTION CODE, HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, ZONING CODE, OR BUILDING CODE SHALL BE FINED NOT LESS THAN $50.00.

(2) A PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO HAS PREVIOUSLY BEEN CONVICTED OF ONE VIOLATION OF A SECTION OF THE FIRE PREVENTION CODE, HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, ZONING CODE, OR BUILDING CODE SHALL BE FINED NOT LESS THAN $200.00.

(3) A PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO HAS PREVIOUSLY BEEN CONVICTED OF TWO VIOLATIONS OF A SECTION OF THE FIRE PREVENTION CODE, HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, ZONING CODE, OR BUILDING CODE SHALL BE IMPRISONED NOT LESS THAN 3 DAYS, AND SHALL BE FINED NOT LESS THAN $350.00.

(4) A PERSON, OCCUPANT, OPERATOR, OWNER OR PURCHASER WHO HAS PREVIOUSLY

BEEN CONVICTED OF THREE VIOLATIONS OF A SECTION OF THE FIRE PREVENTION CODE, HEALTH, SAFETY AND SANITATION CODE, LITTER CODE, HOUSING CODE, ZONING CODE, OR BUILDING CODE SHALL BE IMPRISONED NOT LESS THAN 10 DAYS, AND SHALL BE FINED NOT LESS THAN $500.00.

(E) APPLICATION OF PRIOR CONVICTIONS. A CONVICTION OR CONVICTIONS OBTAINED PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE SHALL CONSTITUTE A CONVICTION OR CONVICTIONS FOR PURPOSES OF ENFORCEMENT OF THE MINIMUM MANDATORY PENALTIES REQUIRED BY THIS SECTION. EACH SEPARATE COUNT OF WHICH A PERSON HAS BEEN CONVICTED SHALL CONSTITUTE A SEPARATE VIOLATION OF A SECTION OF THE BUILDING CODE, HOUSING CODE, FIRE PREVENTION CODE, HEALTH, SAFETY AND SANITATION CODE, LITTER CODE OR ZONING CODE.

(F) CONTINUING VIOLATIONS. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(G) STRICT LIABILITY. THE PROVISIONS OF THIS CHAPTER ARE SPECIFICALLY INTENDED TO IMPOSE STRICT LIABILITY.

Section 2. The Director of Finance shall establish a fund for deposit of the fees and fines collected pursuant to this ordinance, which shall be used for Housing Code enforcement purposes as specified herein.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary to preserve public safety, health and welfare for the reason that clarification and supplementation of provisions of the City Environmental Health Housing Code are necessary to establish minimum standards for the maintenance and condition of dwelling premises in the City, and to establish mandatory rental unit registration and inspection programs, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed Nov. 18, 1996

/s/ Vincent Ciraco
Clerk of Council

/s/ John Valle
Vice-President of Council

Approved November 22, 1996

/s/ Donald Plusquillic
MAYOR

Supreme Court, U.S.
FILED
APR 4 2002
OFFICE OF THE CLERK

No. 01-1275

In the Supreme Court of the United States

CHARLIE HARRIS, ET AL.,
Petitioners,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

MAX ROTHAL
Counsel of Record
DIRECTOR OF LAW

DEBORAH M. FORFIA
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19pp

QUESTIONS PRESENTED

1. Did the United States Court of Appeals depart from the accepted and usual course of judicial proceedings in striking affidavits from the petitioners' brief as new evidence when the same affidavits were used repeatedly in motions in the lower district court and then make the statement that the petitioners lacked that same evidence?

2. Did the United States Court of Appeals sanction departure from the accepted and usual course of judicial proceedings by the lower district court granting summary judgment after almost five (5) years of proceedings, no oral argument, and no bona fide trial?

3. Did the United States Court of Appeals enter a decision that is in conflict with the decision of the Court of Appeals of the Ninth Appellate District that mandatory inspections, twice a year for four years of every rental unit an owner owns when he had been convicted of failing to register, is unconstitutional and violates due process? Also, is the Housing Appeals board a remedy when there is a constitutional question?

4. Did the United States Court of Appeals depart from accepted judicial proceedings in stating that the petitioners were unreasonable to be convinced that a judge can be biased?

5. Did the United States Court of Appeals depart from the accepted and usual judicial proceedings when it did not recognize the defendants' failure to comply with discovery or the district courts' failure to note any of the affidavits presented in the petitioners' behalf?

6. Did the United States Court of Appeals depart from usual judicial proceedings in their failure to recognize that the respondents provided no evidence to prove an emergency to health, safety and welfare of its citizens, and a threat to new development?

7. Did the United States Court of Appeals sanction the departure of the usual and accepted judicial proceedings in the district court when it held the plaintiff accountable for a bogus invisible tape?

8. Were the pro se litigants given less stringency than attorneys in The United States Court of Appeals and the district court or were they given due respect?

Questions 1, 2, 4, 5, 7 and 8 concern purely factual or procedural issues that either were fully and properly addressed by the United States District Court for the Northern District of Ohio and the Sixth Circuit Court of Appeals or are clearly inappropriate for consideration by this Court. Further, the Petitioners fail to address why this Court should exercise jurisdiction over these issues. As such, these questions do not merit further response from Respondents or consideration by this Court.

The Petitioners do touch upon components of questions three and six in their Petition. Therefore, Respondents submit this Response to address the same, and to clarify the facts.

LIST OF PARTIES

Petitioners: Charlie Harris
Jacqueline Harris
John H. Harris

Respondents: Akron Department of Public Health
Akron City Council
John Valle, President of Council
C. William Keck, Director of Health
Robert Remmel
Jodie Forester
Jon Apati
Michele Williams
Laura Smart
Kevin Ragle
Steven Nome
Dwayne Groegor
John Doe
Unknown Akron Health Department Inspectors/Sanitarians

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JURISDICTION

The Sixth Circuit Court of Appeals issued a decision in this case on May 8, 2001. On July 25, 2001, the Sixth Circuit Court issued an Order denying the Petitioners' request for an *en banc* rehearing. Then, three days before their Petition was due, on October 20, 2001, the Petitioners filed for an extension of time (60 days) within which to file their Petition, and Petitioners were given until December 22, 2001 to file their Petition. On January 3, 2002, the Court, via a letter from the Clerk, informed the Petitioners that the original Petition for Writ of Certiorari was being returned because it failed to comply with the rules of this Court. The Clerk enumerated twelve distinct errors with the Petition. They were, in brief, size of paper, booklet format, type of binding, cover, typeset, prohibition of photocopying, margins, text on both sides of paper, order of the documents, page numbering, page limit and proof of service. The Clerk then requested that Petitioner correct the Petition accordingly.

The "corrected" Petition was then filed with the Court sixty days later, with all technical corrections satisfied. However, discounting the form changes, the substance of the corrected document bears little resemblance to the original document submitted to the Court. In the original Petition the statement of the case occupied two pages. In the current Petition, the statement of the case occupies seven pages. Although there are some general similarities from the first document present in the resubmission, the facts and arguments submitted have been altered drastically.

The changes made by Petitioners are changes in substance, not form, and are not permitted by the rules of this Court. Rule 14.5, Rules of the Supreme Court of the United States states:

> If the clerk determines that a Petition is submitted timely and in good faith is in a *form* that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected Petition received no more than 60 days after the date of the Clerk's letter will be deemed timely. (Emphasis added.)

The twelve items enumerated in the Clerk's letter to the Petitioners required only changes in form. Accordingly, the Petitioners were only permitted to make the changes solicited by the Clerk. Petitioners ought not be allowed to alter the substance of the Petition during the grace period granted by Rule 14.5.

The Court, with good reason, has very specific technical filing requirements. The discretionary extension allowed by Rule 14.5 is an extremely important safety valve for those Petitioners who merely make "form" errors. It should not, however, be construed in any way to allow substantive changes of an argument or case presented to this Court. Accordingly, the Petitioners have failed to timely file their Petition and this Court does not have jurisdiction to consider the substance of the current Petition.

STATEMENT OF THE CASE AND FACTS

The "facts" recited in the Petition bear little resemblance to the record below; accordingly, Respondents object to the facts as recited by the Petitioners and provide this Court with the following statement of the case and facts.

The District Court and Sixth Circuit Court of Appeals accurately set forth the pertinent facts related to this case,

which are herein summarized. {*See*, Pet'r App. pp. App.3-App.5, App.12-App.16.} Although the legal issues of this case are relatively simple, the history of this case is long and convoluted. Briefly stated, this case involves federal and state constitutional challenges to a municipal housing ordinance.

In October of 1996, the City of Akron, through Akron City Council, passed Ordinance No. 769, which amended Chapter 150 of the Code of Ordinances, as a proactive emergency measure necessary to preserve public safety, health, and welfare of the citizens of Akron. {App. 33- App. 83} Ordinance 769 mandates registration of all non-owner occupied properties, and authorizes the City Housing Inspector to inspect these properties only upon consent of the owner or occupant, or as otherwise "authorized by law." {Sec. 150.02, App. 39} Ordinance 769 further provides a method of notifying an owner of a violation, and requires that the owner be granted a reasonable time to comply. {Sec. 150.03, App. 40} If an owner disagrees with any Health and Housing Order issued, Section 150.05 of the Health and Housing Code provides an owner with an extensive appeals process prior to any enforcement action. {App. 45} If an owner receives two convictions for violations of the Health and Housing Code, Section 150.40 of the Code requires the owner to submit to biannual inspections of the owner's properties for four years. {App. 76}

In this case, Petitioners own rental units governed by Ordinance 769. In 1996, twelve Plaintiffs filed four *pro se* lawsuits against the City of Akron, Akron City Council, the Akron Department of Health, and various City of Akron employees, (collectively the "City"), alleging violations of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and other state constitutional and tort causes of action.{App. 11, App. 15} Due to the

complexity of the Complaints, the relationship of the twelve Plaintiffs, and the similar nature of the cases, the District Court Judge consolidated the cases and instructed the Plaintiffs to obtain counsel. Although Plaintiffs had already once amended their Complaints, counsel then filed a Second Amended Complaint alleging, under 42 U.S.C. Sec. 1983, that Ordinance 769 violated only the Fourteenth Amendment, and the case moved forward towards trial. Then, Plaintiffs' counsel moved to withdraw from the case after one of the Plaintiffs, herein Petitioner John Harris, led counsel to believe that he surreptitiously audiotaped a status conference with the Judge. After a hearing on the matter, wherein the Judge agreed that said Plaintiff had indeed led counsel to believe such a tape existed, counsel was permitted to withdraw. All Plaintiffs retained new counsel, except Charlie and Jacqueline Harris, who were reluctantly permitted to proceed *pro se*.

It is at this point that an already complex case became, as the District Court stated, "a procedural nightmare for two federal judges."{App. 15} Particularly, Charlie and Jacqueline Harris made several requests to file a Third Amended Complaint, which requests were denied. Because the Harris' were not permitted to again amend their Complaint, they simply filed virtually identical claims in Summit County Court of Common Pleas. The Defendants removed these cases to Federal District Court, and the cases were consolidated herein. The District Court Judge found that these "new" cases were filed to circumvent his denial of the Harris' repeated requests to amend their already twice Amended Complaint.

Throughout this bizarre case history, the Harris' had consistently and intentionally failed to respond to basic discovery requests in the face of numerous motions to compel, culminating in the granting of a Fed. R. Civ. P.

37(c)(1) motion, excluding from the Court's consideration any additional evidence by any party.

In October 1999, the City filed a Motion to Dismiss, or, in the alternative, a Motion for Summary Judgment. One Plaintiff (Borom) filed a Motion for Summary Judgment arguing only the Fourth Amendment issue. Petitioners Charlie and Jacqueline Harris filed a Memorandum in Opposition to the Defendants' Motion for Summary Judgment, arguing only that the Ordinance violates the Fifth, Seventh, and Eighth Amendments and further claimed mental distress. The City filed another Motion for Summary Judgment addressing Petitioners' Charlie and Jacqueline Harris' claims of mental distress. None of the other Plaintiffs, including current Petitioner John Harris, filed any motions, nor responded to either of the City's Motions.

On March 22, 2000, the District Court granted Summary Judgment in favor of all Defendants on all claims. In its decision, the District Court stated:

> "[t]he only constitutional claim properly before the Court at this time is the Fourteenth Amendment claim. However, through an abundance of caution or confusion over what claims are in this case, the defendants filed a summary judgment motion addressing numerous constitutional issues . . . the court will address the Fourteenth Amendment claim, the Fourth Amendment claim and the mental distress claim . . . Charlie and Jacqueline Harris's Fifth, Seventh and Eighth Amendment allegations, which are echoed in the removed cases, are not properly before the Court. Even if they were, they would be

> dismissed as a matter of law because there is no legal basis for such allegations."

{App. 16} The Court then proceeded to fully discuss each constitutional claim, and, ultimately, granted summary judgment to the City.

Upon review, the United States Court of Appeals for the Sixth Circuit affirmed the grant of summary judgment on all issues, also finding that there was no merit to any of the Petitioners' claims. {App. 6} Additionally, the Court of Appeals ruled against the Petitioners on the issues of abuse of discretion by the trial judge in excluding evidence and found no basis to support a claim of bias by the District Court Judge. {App. 8}

REASONS FOR DENYING THE PETITION

I. Petitioners have not articulated any compelling reason to justify discretionary review by this Court.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup.Ct.R.10. Rule 10 of the Rules of the Supreme Court of the United States further provides that "a writ of certiorari will be granted only for compelling reasons." In this case, Petitioners do not set forth any compelling reasons to invoke this Court's jurisdiction.

A. There is no conflict of decisions between a state court of last resort and the Sixth Circuit Court of Appeals.

Rule 10(b) of the Rules of the Supreme Court of the United States provides that this Court may grant a Petition if

a state court of last resort has decided an important federal question in a way that conflicts with the decision of a United States Court of Appeals.

The Petitioners erroneously contend that the Sixth Circuit Court of Appeals' decision upholding the constitutionality of Ordinance 769 is in conflict with a decision of the Court of Appeals for the Ninth Appellate District of the State of Ohio, and, as such, this issue warrants consideration by this Court. First, an opinion of a state appellate court does not represent a ruling by a state court of last resort. Ohio Const. Art. IV, Sec. 2(B)(2)(ii). Additionally, the Ohio Appellate Court opinion referenced by Petitioners is not in conflict with the Sixth Circuit Court of Appeals decision herein. Particularly, Ohio's Ninth District Court of Appeals found Ordinance 769 unconstitutional based only on state grounds, and only as applied to the unique facts of that particular case. *See Urban Imperial Building & Rental Corp. v. City of Akron*, 139 Ohio App.3d 221, 225, 743 N.E.2d 478, 481. Finally, the opinion by the Sixth Circuit is unpublished, and as such is only binding on the parties to the litigation. 6th Cir. R. 28(g). Therefore, this case has no precedential value, nor is it considered *stare decisis* as to the issues presented. There is no conflict for this Court to resolve at this time.

B. The District Court and the Sixth Circuit Court of Appeals applied the proper legal standards to the facts.

Rule 10(a) of the Rules of the Supreme Court of the United States provides that this Court may grant a Petition for Writ of Certiorari if "a United States Court of Appeals...has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,

as to call for an exercise of this Court's supervisory power." Petitioners fail to provide argument, supported by the record, that the Sixth Circuit Court of Appeals departed in any way from the customary course of judicial proceedings. Rather, the District and Appellate Courts applied the proper legal standards to the facts. Accordingly, this Court should not exercise discretionary jurisdiction in order to overturn fact findings adverse to Petitioners.

1. The District Court and Sixth Circuit Court of Appeals did not depart from accepted judicial proceedings when determining that Ordinance 769 does not violate the Fourth Amendment prohibition against unreasonable searches.

Petitioners correctly cite *Camera v. Municipal Court of the City and County of San Francisco,* 387 U.S. 523 (1967), as the standard established by this Court for determining whether an administrative search conducted pursuant to a municipal housing ordinance violates Fourth Amendment protections. The Sixth Circuit Court of Appeals applied the standard enunciated in *Camera* to Ordinance 769 and found that the Ordinance does not offend Fourth Amendment protections. {App. 6-App.7} Said Court found that Ordinance 769 specifically provides that if entry is refused, an inspection may only be conducted as provided by law, either with a warrant or pursuant to a proper exception to the warrant requirement. {App. 39} In their various motions to the District Court, Petitioners presented only unsupported legal conclusions of unconstitutionality. The District Court properly found that Plaintiffs presented no

evidence to support such a claim of unconstitutionality, and the Sixth Circuit Court of Appeals affirmed. {App.25, App.6}

Therefore, because the correct legal standard was applied, this Court could only reach a different conclusion through a different interpretation and analysis of the facts. In an attempt to sway this Court to accept their Petition, Petitioners attempt to introduce "new" facts at this juncture. This Court, however, should not accept jurisdiction for the purpose of correcting perceived errors in the factual findings when the proper stated rule of law was applied by the Courts below. Sup. Ct. R. 10. Thus, there is no compelling reason for this Court's review.

2. The District Court and Sixth Circuit Court of Appeals did not depart from accepted judicial proceedings when determining that Ordinance 769 does not violate either procedural or substantive due process.

The Akron Health and Housing Code, and specifically Ordinance 769, comport with the constitutionally mandated due process standards regarding notice and an opportunity to be heard. As the District Court found, Akron's Health and Housing Code provides "a plethora of administrative procedures" to challenge the issuance of a Housing Code Order. {App. 22} These administrative procedures include adequate notice to owner of a violation, a reasonable time for the owner to comply with the code requirements, and an administrative right of appeal to the Housing Appeals Board and state courts. {Code 150.05, App. 45-App.47} Once again, at both the District Court and Sixth Circuit Court of

Appeals, Petitioners failed to provide any evidence to support their vague claims of inherent unfairness and insufficient procedures. Accordingly, the District Court properly granted summary judgment on these issues, and the Sixth Circuit Court of Appeals affirmed. {App.22-App.25, App.7-App.8}

The Akron Health and Housing Code and Ordinance 769 do not violate the constitutionally mandated standard of substantive due process. The District Court applied the legal standard as announced in *Mansfield Apartment Owners Ass'n v. City of Mansfield,* 988 F.2d 1469, 1477 (6th Cir. 1993), *citing, Williamson v. Lee Optical*, 348 U.S. 483, 487-88 (1955), noting that "an ordinance violates substantive due process if it fails to advance a legitimate governmental interest or if it is an unreasonable means of advancing a legitimate governmental interest" or if the Defendants' conduct in passing Ordinance 769 "shocks the conscience." The District Court specifically found "that the Ordinance does not shock the conscience because the Ordinance is a legitimate use of legislative authority and it is rationally related to a valid governmental interest." {App. 23} The Sixth Circuit also applied the *Mansfield* rule of law and held that there was ample evidence in the preamble to the Ordinance to support public necessity. {App. 7}

Thus, because the District Court and Sixth Circuit Court of Appeals applied the proper legal standard, this Court could only find a departure from "the accepted and usual course of judicial proceedings," if this Court re-evaluating the facts of this case. Accordingly, Rule 10(a) does not apply and this Court should deny certiorari.

C. The District Court and the Sixth Circuit Court of Appeals relied upon well-settled federal law.

Rule 10(c) of the Rules of the Supreme Court of the United States provides that this Court may grant a Petition if a United States Court of Appeals has decided an important question of federal law that has not been settled by this Court.

Petitioners assert that the decision in this case is worthy of review because somehow it has changed a municipality's ability to regulate rental properties, and, as such, it will affect rental owners nationwide. The municipal governmental interest in regulating and inspecting rental properties is well established by this Court. *See Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988); *Camera v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 537-39 (1967); *and, Mansfield Apartment Owners Ass'n v. City of Mansfield,* 988 F.2d 1469, 1477 (6th Cir. 1993), *citing, Williamson v. Lee Optical*, 348 U.S. 483, 487-88 (1955). Both the District Court and the Sixth Circuit Court of Appeals relied upon the law set forth in these cases when deciding that Ordinance 769 passed constitutional muster. {App. 6, 7, 19, 23} The Petitioners have not, and cannot, cite a single instance in which the lower courts have altered federal law.

Because "the asserted error consists of erroneous factual findings or misapplication of a properly stated rule of law," this Court, in accordance with Rule 10, should not exercise discretionary jurisdiction over the Petition for Writ of Certiorari herein.

CONCLUSION

Based upon the forgoing, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully Submitted,

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Stephanie H. York
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Counsel for Respondents
Akron Department of Public Health, et al.

Supreme Court, U.S.
FILED
APR 30 2002

No. 01-1275

In The

Supreme Court of the United States

CHARLIE HARRIS, ET AL.,

Petitioners,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITIONERS' REPLY BRIEF

CHARLIE & JACQUELINE HARRIS
1310 East Ave.
Akron, Ohio 44307
(330) 434-1027

JOHN HARRIS
1040 Cordova
Akron, Ohio 44320
(330) 253-6048

Pro Se Petitioners

PETITIONERS' REPLY BRIEF

The Petitioners will use the following example to show how unconstitutionally the ordinance is being implemented proving that it is unconstitutional. Petitioners were issued orders for 926 Yale Street on May 5, 1994, prior to the October 25, 1995 Orders. Sometime between May 1994, and September 1995 Mr. Groeger (the Housing Inspector) spoke with Harry Lamb who informed him that he owned the property. Mr. Groeger decided that Harry Lamb was the tenant and the Petitioners were the landlords.

A meeting was held in the office of Lunzy Armstrong and the Petitioners were told to evict Mr. Lamb and turn on the water or they would be prosecuted. At that time Harry Lamb was a squatter because he failed to make payments on a land contract, abandoned the property and then later broke in. The Petitioners were to give a copy of the eviction notice to a Mr. Irvin at the Health Department. This was after the Petitioners proved that the house had been abandoned without water for about three years and that Mr. Lamb broke in and proceeded to stake a claim. At that time the Petitioners requested that the property be razed. Mr. Groeger insisted that the house was not condemnable.

Consequently, the Petitioners ordered the water turned on, filed an eviction notice and hand delivered a copy to Mr. Irvin by October 26, 1995. The eviction hearing was scheduled but Harry Lamb retained Attorney James Brown to file a counter claim in the Common Pleas Court. At that time Respondents Steven Nome, Duane Groeger and Robert Remmel had full knowledge that Mr. Lamb filed a counter claim for possession of 926 Yale Street. That was Case No. CV 12 4318 assigned to the Honorable Judge Ted Schneiderman. The case was settled

and it was determined that Mr. Lamb would have Attorney James Brown draw a land contract, remove Diane Waggoner, a previous land contract holder, from the records and then file their land contact. The terms were that Harry Lamb would be fully and completely responsible for the property. He would pay $1,000.00 down and $100.00 per month until the agreed amount is paid off. Attorney Brown retained $25.00 of the $1000.00 down payment to remove Diane Waggoner from the records and file the Land Contract with Harry Lamb. This was all settled by May 31, 1996. For almost five years the Respondents, including Attorney Brown, communicated with Harry Lamb for he was indeed the owner occupant. (See attached exhibits 1-6)

Then, after Ordinance 769 was passed and the Petitioners were in Federal Court questioning its constitutionality, the Respondents sent the Petitioners notice on October 19, 1999. That notice was very threatening and it was concerning 926 Yale Street. The Petitioners were terrified and believed that the Respondents got with Harry Lamb and Attorney James Brown to give cause for harassing the Petitioners. Harry Lamb and Attorney James Brown were encouraged by the Respondents to deliberately not contact the Petitioners. It was only after that notice that the Petitioners filed a case, it was filed on October 26, 1999. (See attached exhibit 7) The attached notice is one of the major reasons why the Petitioners filed this case. The Respondents tried to instill in this Court and others that Petitioners filed a case in order to subvert the District Court but that is not true. The Petitioners were never informed of a hearing prior to their notice.

It had been established that the Respondents, after dealing with Harry Lamb, sent the Petitioners a threatening notice and that the Respondents' actions caused Petitioners to be in court back in 1995.

In the transcript of the April 26, 2001 hearing the Respondents were to notify the Petitioners when they were going to go into the property at 926 Yale Street and they did not do that. Magistrate Shoemaker instructed the Respondents to communicate with the Petitioners for a date when to have a hearing with Harry Lamb and Attorney Brown. That was also deliberately ignored. The date of June 21 or 22 was never communicated to the Petitioners in anyway by anyone. That Petitioners would have definitely had Harry Lamb sign the paperwork necessary to end this matter if they had known about the hearing. That entire hearing was illegal and only proves the Petitioners claims that the Respondents actions were to unjustly implement the ordinance on the Petitioners.

The Petitioners were then sent a notice from the Respondents that the property would be razed at the cost to the Petitioners. This forced the Petitioners to sign a waiver in ignorance. Back in October of 1995 and at the April 26, hearing the Petitioners requested that the property be razed. But that option was denied.

The hearing on June 21, or 22, 2001 was held and Harry Lamb and Attorney Brown validated almost everything the Petitioners attested to. Harry Lamb agreed ownership of the property. Despite all of this the Respondents informed Mr. Smylie at the Health Department to pursue the Petitioners with the implementation of the ordinance because the Housing Appeals Board ordered demolition. The Petitioners had an appeal before the Housing Appeals Board on March 26, 2001. That hearing was concerning the implementation of Ordinance 769 because

a demolition order was given for 926 Yale Street. That reverted right back to the Petitioners' initial complaint in the Common Pleas Court. Despite all of the evidence presented the Housing Appeals Board issued a rubber stamp denial.

The Petitioners have been gravely and illegally handicapped since they were never given discovery time. They were barred information concerning an elderly women and the elderly abuse of Harry Lamb towards his mother. They were barred from receiving any copies of any documentation proving search with a warrant, entry into the property and police reports. In fact it is due to a lack of discovery that the Petitioners are unable to file a Summary Judgment in this court. After all of the facts and how all the events transpired the Respondents continued to pursue the Petitioners. The Petitioners constitutional rights have been ignored even though the evidence was clear.

There have been many legal cases filed against the Akron Health Inspectors and the City of Akron.

The Common Pleas Court case involved the illegal actions on the part of the Respondents to cause the Petitioners undo harm while at the same time using a strong-arm to deliberately implement the ordinance. It is the actions of the Respondents that the Common Pleas Court case involved which lead to the undue implementation of the ordinance which the Petitioners are attempting to appeal in this Court.

The Housing Appeals Board granted the Akron Health Department to implement the mandatory inspections on the Petitioners for no other reason than because Harry Lamb and Attorney James Brown never did the paper work required to transfer title. The property was clearly not a rental or leased unit of the Petitioners. That

property was an owner occupied unit to which the ordinance does not apply. At present the Akron Health Department has already inspected over 12 of the units that the Petitioners own with a fee of $125.00 each for inspection. The total cost including fees, repairs, and other costs will exceed $35,000 per year. Most of the Units they have inspected are presently under the Akron Metropolitan Housing Authority Voucher Program and were just inspected and will have annual inspections. They have inspected a unit that was newly constructed less that two years ago and on the HUD Voucher Program. On the orders for that house they site repairs that simply do not exist. Even though the Petitioners have never been convicted of not complying with orders, they have properly registered all of their units, the Respondents are implementing the mandatory inspections on them for no other reason than because title had not been properly transferred. There was absolutely no safety, health and welfare issue involved. The property was demolished some months ago and demolition is listed as a remedy in the Ordinance. They did this while the Petitioners were in Court trying to settle the issue of ownership; Petitioners case has yet to be appealed.

All of the above clearly shows that the constitutionality of this ordinance must be reviewed by this Court.

Respectfully submitted,

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Akron, Ohio 44320
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Petitioners Pro Se

PLAINTIFF'S EXHIBIT 1

[LOGO] **DEPARTMENT OF PUBLIC HEALTH**
MORLEY HEALTH CENTER/
177 South Broadway
Akron, OH 44308/(216) 375-2960

C. WILLIAM KECK, M.D., M.P.H./
DIRECTOR OF HEALTH

AKRON HEALTH COMMISSION
George E. Goldman, M.D., F.A.C.E.P.
President

Donald L. Plusquellic
Mayor

Posted 10-20-95
1:30 PM DEG

October 20, 1995

Harry Lamb
926 Yale Street
Akron, Ohio 44311

RE: 926 Yale Street

Section 150.21 of the Environmental Health Housing Code regarding the discontinuance of utilities reads as follows:

> "No owner, operator, or occupant shall cause any service, facility, equipment or utility which is required under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may

be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the Housing Enforcement Officer."

It has been determined that the water service at the above address has been discontinued for reasons not compatible with the aforementioned section of the Housing Code. Therefore, by authority of Section 150.05 declaring an emergency, you are hereby ordered to restore the water service within 24 hours.

Whoever violates or fails to comply with any of the provisions of the Environmental Health Housing Code is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both. Unless otherwise provided, a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

/s/ C. William Keck, M.D.

C. William Keck, M.D., M.P.H.
Director of Health

CWK/bas

* If you have any questions, please contact Sanitarian Duane Groeger at 375-2366.

PLAINTIFF'S EXHIBIT 2

October 21, 1995

Duane Groeger
Department of Public Health
177 South Broadway
Akron, Ohio 44308

RE: 926 Yale Street

Dear Mr. Groeger;

Enclosed you will find a copy from the water company proving the water at 926 Yale Street has been turned off for non payment ever since March of 1993. According to their records it has not been turned on since then. I do not understand how your records show that the water was turned off May of 1995 when it has not been turned on. The balance due is almost $200.00.

Mr. Lamb moved out of the property and broke into it to try to stake a claim that he owns property. He is not a tenant. And every time we have done any work to the property someone has come behind us and destroyed repairs. We even boarded the house up and Mr. Lamb has broken in and put stuff in it to say he lives there in order to hold us up.

You will also find copies of letters that Mr. Lamb's lawyer sent us regarding that property. Mr. Lamb was living in his mothers house on 80 West street. He was and still is a squatter and he is using the system to cost us tax payers undue stress and strain.

At this present time we make request that you board up the property at our cost.

Unfortunately we fear that is going to end up costing us more money. We do not qualify for volunteer legal services.

If Mr. Lamb's lawyer contacts us in writing that he will accept his responsibility to finally pay for something and meet with us to solve this problem I know all parties involved will be satisfied. We have yet to hear from Mr. Brown since our conversation with Mr. Lamb.

Thank you for your time.

Charlie Harris
Jacqueline Harris

PLAINTIFF'S EXHIBIT 3

FORCIBLE ENTRY & DETAINER FOR PERSONAL JUDGMENT

STATE OF OHIO)
COUNTY) ss.

IN THE MUNICIPAL COURT OF

_____

Jacqueline Harris	)	**Case No.**
1310 East Av. 44307	)	
Plaintiff	)	**Complaint**
	)	
vs.	)	
	)	
Harry Lamb	)	
926 Yale St.	)	
Defendant.	)	

FIRST CAUSE OF ACTION

1. Plaintiff___ for the first cause of action say's that the defendant has ever since the 20th day of October, 1995 unlawfully and forcibly detained from plaintiff___ possession of the following described premises, situated in the City of Akron, County of Summit, State of Ohio, and known as 926 Yale St.

_____

_____

together with the lot of land on which said House is located.

2. The said defendant___ entered upon said premises as tenant___ of the plaintiff_____, the lease thereof expired at the time herein first mentioned, and

from that time said defendant___ has unlawfully and forcibly held over said term.

3. On the 20th day of October, 1995 plaintiff___ duly served upon the defendant___, as required by law, notice in writing to leave said premises.

4. Plaintiff___ ask _____ process and restitution.

SECOND CAUSE OF ACTION

1. Plaintiff___ for _____ second cause of action say _____ that there is due _____ for the rent of said premises, from the defendant _____ the sum of _____ Dollars ($_____), which _____ claim _____ with interest at the rate of _____% per annum from the _____ day of _____ 19__

2. Plaintiff___ pray _____ judgment against said defendant _____

_____

for said sum of _____ Dollars ($_____), with interest thereon at the rate of _____% per annum from the _____ day of _____ 19__, and the costs herein incurred.

(216) 434-1027
/s/ Jacqueline Harris
Attorney___ for Plaintiff___

STATE OF OHIO)
COUNTY) ss.

_____being first duly sworn, deposes and says that _____ plaintiff _____ herein and that the facts and allegations contained in the foregoing conplaint are true as _____ verily believe.

_____

Sworn to before me and subscribed in my presence on this _____ day of _____, 19__

_____

_____

PLAINTIFF'S EXHIBIT 4

AKRON HEALTH DEPARTMENT
JOHN D. MORLEY HEALTH CENTER
177 SOUTH BROADWAY
375-2366

METHOD SERVED CERTIFIED MAIL
Program HAPPEN
OWN ____ RENT X OTHER [ILLEGIBLE]
OCCUPANTS ___
NUMBER OF UNITS ___
TYPE STRUCTURE KP

ORDERS SERVED TO:
OCCUPIED 926 YALE STREET 3/18
Occupant Address Telephone
CHARLES & JACQUELINE HARRIS
Owner/Agent/Person in Control
1310 EAST AVENUE 434-1027
Address Telephone
AKRON OH 44307
City State Zip

By authority of the Akron Environmental Health Housing Code, Chapter 150, your attention is directed below with orders and/or recommendations for corrections. SEE REVERSE SIDE FOR APPEALS PROCEDURE, INFORMATION REGARDING BUILDING PERMITS AND FIRE SAFETY.

1 – 150.10 –	Have interior stairway put in a good state of repair.
2 – 150.10 –	Provide/secure handrails where necessary.
3 – 150.08 –	Properly vent hot water tank.

4 – 150.08 –	Properly seal hot water tank flue pipe at chimney.
5 – 150.09 –	Properly seal furnace flue pipe at chimney.
6 – 150.10 –	Have heating facilities put in a good state of repair.
7 – 150.10 –	Provide rodentproof drain grate for cellar floor drain.
8 – 150.09 –	The wiring does not meet the regulations of Section 150.09 of the Akron Health Housing Code and must be corrected. All repairs must be done in accordance with the Akron Electrical Code with necessary permits. Consult a licensed electrical contractor to have the necessary work performed.
9 – 150.10 –	Repair walls and ceilings where necessary.
10 – 150.10 –	Recover worn flooring or satisfactorily repair where necessary.
11 – 150.10 –	Have existing plumbing fixtures and appurtenances put in a good state of repair.
12 – 150.09 –	Provide ventilation to bathroom and toilets.
13 – 150.21 –	Provide hot and cold running water to maintain sanitary facilities or vacate the premises. (Comply by October 26, 1995).
14 – 150.10 –	Repair/replace gutters and downspouts in an approved manner.

15 – 150.10 – Repair or replace porch floor(s), steps, rail and roof supports where necessary.

16 – 150.10 – Repair or replace siding and trim where necessary.

COMPLY WITH THE ABOVE ORDERS BY NOVEMBER 25, 1995, *UNLESS OTHERWISE NOTED.
REVISED FROM ORDERS PREVIOUSLY ISSUED MAY 5, 1994.

OCTOBER 25, 1995
DATE TIME

/s/ Duane Groeger
SANITARIAN

PLAINTIFF'S EXHIBIT 5

DATE: 5 31 96

CIVIL
TRANSFER/CONSOLIDATION/TERMINATION
APPROVAL FORM

CASE NUMBER: CV95-12-4318
CAPTION: Jacqueline Harris vs. Harry Lamb

I. TRANSFER

( ) T15A Transfer from Judge _____ to Judge _____

REASON FOR TRANSFER:
PLEASE CIRCLE APPROPRIATE REASON

REFILED CASE (previous case number: _____)
or RECUSAL

CONSOLIDATION

( ) CONS The above captioned case is being consolidated with case number CV _____.

(PLEASE ATTACH HISTORY CARD
WITH ALL TRANSFERS)

VOL 1968 PAGE 0773

Administrative Judge
/s/ Ted Schneiderman
Judge

_____
Judge

( ) REAC Reactivated
( ) REDS Redesignated
- ( ) A Professional Tort
- ( ) B Product Liability
- ( ) C Other Tort
- ( ) D Workers Compensation
- ( ) E Foreclosure
- ( ) F Administrative Appeal
- ( ) G Complex Litigation
- ( ) H Other Civil

II. TERMINATIONS

- ( ) t5 Jury Trial
- ( ) t6 Court Trial
- (✓) t7 Settled/Dismissed prior to trial
- ( ) t8 Dismissal
- ( ) t9 Dismissal for want of prosecution
- ( ) t10 Magistrate
- ( ) t11a Diversion by Arbitration
- ( ) t11b Diversion by Mediation
- ( ) t12 Default
- ( ) t14 Unavailability of party for trial
- ( ) t15b Transfer to another court
- ( ) t16 Referral to private judge
- ( ) t17 Bankruptcy stay or interlocutory appeal
- ( ) t18 Other Terminations

INITIALS:

[illegible] Responsible Court Personnel

_Clerk of Courts input

PLAINTIFF'S EXHIBIT 6

[LOGO] **AKRON HEALTH DEPARTMENT**
MORLEY HEALTH CENTER/
177 South Broadway
Akron, OH 44308/(330) 375-2960

ARRON HEALTH COMMISSION
George E. Goldman, M.D., F.A.C.E.P.
President

C. WILLIAM KECK, M.D.,/
DIRECTOR OF HEALTH

October 19, 1999

Charles and Jacqueline Harris
1310 East Avenue
Akron, Ohio 44307

RE: 926 Yale Street

Since you have elected not to appear at the prosecutor hearing on **October 19, 1999**, a final **10** day extension has been granted.

Whoever violates or fails to comply with any of the provisions of the Environmental Health Housing Code is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both. Unless otherwise provided, a separate offense shall be deemed committed each day during or on which a violation occurs or continues. In addition to any criminal penalties whoever violates any provisions of this chapter shall be subject to administrative penalties of up to one thousand dollars ($1,000.00).

If you are not in full compliance within the time stated above, this matter may result in the City's initiating court proceedings or administrative penalties against you.

If you have any further questions regarding this matter, please contact **Jodie Forester** at 375-2366 between 7 a.m. and 9 a.m.

ENVIRONMENTAL HOUSING DIVISION

/s/ R. Remmel
R. Remmel
Special Projects Coordinator

RR/mlm